

EXHIBIT 11

1 Timothy J. Casey (#013492)
James L. Williams (#026402)
2 SCHMITT SCHNECK SMYTH CASEY & EVEN, P.C.
1221 East Osborn Road, Suite 105
3 Phoenix, AZ 85014-5540
Telephone: (602) 277-7000
4 Facsimile: (602) 277-8663
timcasey@azbarristers.com
5 Counsel for Defendants Joseph M. Arpaio and
the Maricopa County Sheriff's Office

6 Thomas P. Liddy (#019384)
7 MARICOPA COUNTY ATTORNEY'S OFFICE
Civil Services Division
8 222 N. Central, Suite 1100
Phoenix, Arizona 85004
9 602-506-8066
10 Co-counsel for Defendants Joseph M. Arpaio and
the Maricopa County Sheriff's Office

11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 Manuel de Jesus Ortega Melendres, et al.,
15 Plaintiffs,
16 vs.
17 Joseph M. Arpaio, et al.,
18 Defendants.

No. CV 07-02513-PHX-GMS

**DEFENDANTS' NOTICE OF WAIVER
ON LIMITED ISSUE**

19 In follow-up to the Status Conference heard this date (Dkt#540), defendants Joseph
20 M. Arpaio ("Arpaio") and the Maricopa County Sheriffs Office ("MCSO") hereby waive any
21 and all appeal issues regarding only the Court's potential bias, impartiality, and/or conflict of
22 interest as set forth in the Court's Order dated June 19, 2012 (Dkt#537). This waiver is
23 authorized by Arpaio on his own behalf and on behalf of the MCSO.

24 Arpaio and MCSO expressly reserve the right to appeal any other issue(s).

25 DATED this 29th day of June, 2012.

26 SCHMITT SCHNECK SMYTH CASEY & EVEN,
P.C.

27 /s/Timothy J. Casey
28 Timothy J. Casey
James L. Williams

1221 E. Osborn Rd., Suite 105
Phoenix, Arizona 85014
Telephone: (602) 277-7000
Facsimile: (602) 277-8663
timcasey@azbarristers.com
Counsel for Defendants Joseph M. Arpaio and the
Maricopa County Sheriff's Office

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2012, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

The Honorable G. Murray Snow
United States District Court
401 West Washington Street,
Phoenix, Arizona 85003-2158

Stanley Young, Esq.
Andrew Carl Byrnes, Esq.
COVINGTON & BURLING, LLP
333 Twin Dolphin Road
Redwood Shores, California 94065
Counsel for Plaintiffs

Daniel Pochoda, Esq.
Annie Lai, Esq.
ACLU FOUNDATION OF ARIZONA
3707 N. 7th Street, Suite 235
Phoenix, Arizona 85014
Counsel for Plaintiffs

Cecillia Wang
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, California 94111
Counsel for Plaintiffs

Andre Segura, Esq.
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
Counsel for Plaintiffs

Nancy Ramirez, Esq.
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATION FUND
634 S. Spring Street, 11th Floor
Los Angeles, California 90014
Counsel for Plaintiffs

1 Thomas P. Liddy
2 Deputy County Attorneys, Civil Services Division
3 Maricopa County Attorney's Office
4 222 N. Central, Suite 1100
5 Phoenix, Arizona 85004
6 Co-counsel for Defendants Joseph M. Arpaio and
7 the Maricopa County Sheriff's Office
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/s/Eileen Henry
Eileen Henry, Paralegal
SCHMITT SCHNECK SMYTH CASEY & EVEN, P.C.

EXHIBIT 12

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Manuel de Jesus Ortega Melendres, et al.,)

No. CV-07-2513-PHX-MHM

10 Plaintiff,

ORDER

11 vs.

12 Joseph M. Arpaio, et al.,

13 Defendant.
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18 Currently pending before the Court is Defendants Sheriff Joseph M. Arpaio, Maricopa
19 County, and the Maricopa County Sheriff's Office's Motion for Recusal. (Dkt.#63.) After
20 reviewing the relevant documents and determining oral argument unnecessary, the Court
21 issues the following Order.

22 **I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

23 Having already issued two substantive Orders in this case (Dkt.##25, 60.), the Court
24 is intimately familiar with the underlying facts and sees no reason to go through them now
25 in great detail. On December 12, 2007, Plaintiffs Manuel de Jesus Ortega Melendres, Jessica
26 Quitugua Rodriguez, David Rodriguez, Velia Meraz, Manuel Nieto, Jr., and Somos America
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28

1 filed suit—on behalf of themselves and all others similarly situated¹—against Defendants
2 pursuant to the Fourth and Fourteenth Amendments to the United States Constitution, Title
3 VI of the Civil Rights Act, and Article II, § 8 of the Arizona Constitution alleging racial
4 profiling and unlawful detention of persons of Hispanic appearance and/or descent during
5 Defendants’ attempt to enforce federal immigration laws. On January 3, 2008, Defendants
6 moved to dismiss the Complaint; Plaintiffs subsequently sought leave to amend.
7 (Dkt.##12,17.) On September 5, 2008, the Court granted leave to amend and denied as moot
8 Defendants’ motion to dismiss. (Dkt.#25.) Thereafter, Defendants renewed their dismissal
9 motion. On February 10, 2009, after holding oral argument, the Court denied Defendants’
10 renewed motion to dismiss on the merits. See Melendres v. Arpaio, 598 F. Supp. 2d 1025
11 (D. Ariz. 2009); (Dkt.#60.) On February 23, 2009, thirteen days after the Court’s Order was
12 entered, Defendants moved to recuse the Court under both 28 U.S.C. § 144 and 28 U.S.C.
13 § 455.

14 In support of their Motion for Recusal, Defendants submitted the affidavit of Mr.
15 David Hendershott, Chief of the Maricopa County Sheriff’s Office (“MCSO”), as well as
16 supporting exhibits. Plaintiffs responded in opposition with a declaration from Mr. Aaron
17 Lockwood, an attorney with the law firm of Steptoe and Johnson, along with supporting
18 exhibits. The factual background, as reflected in the filings made by the affiant and declarant,
19 is as follows.

20 The Court has an identical twin sister, Janet Murguia. Janet Murguia is currently
21 President and CEO of the National Council of La Raza (“NCLR”). NCLR is the largest
22 national Latino civil rights organization in the United States. Janet Murguia previously
23 served as Deputy Director of Legislative Affairs to President William J. Clinton, and as
24 Executive Vice Chancellor for University Relations of the University of Kansas.
25 Furthermore, one of the Court’s older brothers, Ramon Murguia, an attorney in private

26
27 ¹Plaintiffs have filed a “Motion to Certify the Class,” and that Motion is currently
28 pending with the Court. (See Dkt.#93.)

1 practice in Kansas City, Kansas, has also been affiliated with NCLR, having served on the
2 organization's Board of Directors, including a term as its Chairman.

3 Defendants contend that it was not until February 11, 2009—the day after the Court
4 ruled against them in its first potentially dispositive Order—that they became aware of the
5 Court's relationship with her sister and her sister's connection to NCLR. According to
6 Defendants, on February 11, 2009 the *Phoenix Business Journal* published an article entitled,
7 "Federal Court sides with ACLU against Arpaio in round 1 of profiling case." Among other
8 things, this article mentioned that Janet Murguia is "president and CEO of the National
9 Council of La Raza, a leading Hispanic advocacy group." (Dkt.#63, Exhibit 1.) That same
10 day, an online version of the *Phoenix New Times* published an article commenting on the
11 Court's Order. Among other things, the *New Times* article noted that the Court is the "[f]irst
12 Latina judge appointed to the U.S. District Court in Phoenix." (*Id.* at Exhibit 2.) Similarly,
13 on February 12, 2009, *The Arizona Republic* ran a story in its local section concerning the
14 instant case, in which it discussed the Court's personal background, along with that of her
15 sister. (*Id.*)

16 Through their affiant, Defendants contend that after these and other media sources
17 publicized the Court's personal background, including her sister's work at NCLR,
18 Defendants were contacted by members of the public—who were apparently looking to
19 express their disappointment with the Court's ruling in the instant case. According to
20 Defendants, it was through these public comments that they were first alerted to the Court's
21 personal history. Defendants also claim public reaction to the Court's February 10, 2009
22 Order was alarming, since, according to Defendants, the public appeared to be more focused
23 on the relationship between the Court and her sister than on the underlying merits of the
24 action. To this end, Defendants have submitted five 'reader comments' that were posted on
25 websites belonging to the *The Arizona Republic* and the *Phoneix Business Journal*. These
26 reader comments were posted alongside online versions of the newspapers' aforementioned
27 February 11, 2009 articles. Defendants contend that these five reader comments typify the
28 sentiments communicated to them by members of the public, and that these selected reader

1 comments underscore what Defendants perceive to be the public's reaction to Court's
2 continued role in this case. Defendants' proffered reader comments include the following:

- 3 • "Of course this Judge will let the lawsuit stand. Her sister is the President of
4 La Raza. Can you say CONFLICT OF INTEREST!"
- 5 • "They [*The Arizona Republic*] seem to have left out that Judge Murguia is the
6 sister of the head of La Raza. Kind of important fact to leave out, don't you
7 think?"
- 8 • "Judge Murguia ... is only making her sister's job easier."
- 9 • "Wrong is just WRONG.... I would have made the same ruling and MY sister
10 is not connected to La Raza."
- 11 • "[Judge] Murguia is the twin sister of Janet Murguia, president and CEO of the
12 National Council of La Raza, a leading Hispanic advocacy group. This judge
13 should be impeached for not recusing herself. Peter Kozinets should be fired
14 by the plaintiffs for tainting their lawsuit by getting a judge with such an
15 obvious conflict of interest to the case. If they ever had a shred of legitimate
16 claim, this blows it away."

17 Defendants additionally claim that while researching the Court's background they
18 came upon a 2004 newspaper article published in the *Kansas City Star*. This article noted
19 that the Court and Janet Murguia are the youngest of six children, and that the Court and her
20 siblings constitute "one big chain," and "[i]f not for one, the chain would be broken." (See
21 Dkt.#63, ¶ 11.) The article also describes the relationship between the Court and her
22 identical twin sister as "close," reporting that they "talk constantly," and speak "to each other
23 several times a week." (Id.)

24 Questioning Defendants' factual representations, Plaintiffs responded with their own
25 submission. Specifically, Plaintiffs point out that on December 11, 2007, the day before the
26 instant case was filed, *The Arizona Republic*—which is the State of Arizona's largest daily
27 circulation newspaper—published a front page story detailing the Court's sibling relationship
28 with Janet Murguia. Because this article contains quotes from Sheriff Arpaio as well as the

1 Maricopa County Attorney, and because the article focused on another high profile federal
2 lawsuit involving many of the same Defendants, Plaintiffs argue that the article contradicts
3 Defendants' stated position that they were unaware of the Court's background until February
4 11, 2009. (Dkt.#70, Exhibit A.) Plaintiffs further note that this story was picked up and
5 reported nationally by the Associated Press. (Id. at Exhibit B.)

6 With respect to Janet Murguia's work with NCLR, Defendants allege that NCLR has
7 continually offered public comments about the facts of this case, including published articles
8 and speeches by Janet Murguia herself. For example, according to Defendants, NCLR is on
9 record as "strongly oppos[ing] efforts to make state and local police responsible for the
10 enforcement of federal immigration laws." (See id. at Exhibit 7.) Similarly, according to
11 Defendants, NCLR has issued statements claiming that the local enforcement of federal
12 immigrations laws is "having a serious negative impact on Latino communities," and that
13 "delegation of immigration authority is likely to result in racial profiling, police misconduct,
14 and civil rights violations." (Id. at ¶ 15.)

15 Defendants have also submitted evidence that NCLR has a Phoenix office, and
16 therefore has a direct presence in Maricopa County. (Id. at ¶ 19.) Defendants also note that
17 NCLR's website directs individuals who believe that their rights have been violated to
18 contact one of NCLR's affiliate organizations. Among the organizations listed as affiliates
19 are the American Civil Liberties Union ("ACLU") and the Mexican American Legal Defense
20 and Education Fund ("MALDEF"). Both the ACLU and MALDEF, while not parties to this
21 case, are providing legal representation to the named Plaintiffs.

22 Among the litany of reasons Defendants submit to support their recusal motion, one
23 concerns a recent public awareness campaign launched by NCLR, "We Can Stop the Hate."
24 (See www.wecanstopthehate.org.) The We Can Stop the Hate campaign contains a
25 prominent picture of Janet Murguia, and links to several of her public speeches. Specifically,
26 Defendants point to a February 4, 2009 article available on the website. This article addresses
27 actions taken by Sheriff Arpaio and the Maricopa County Sheriff's Office ("MCSO").
28 Although the actions of Sheriff Arpaio and Maricopa County addressed in the article appear

1 to be unrelated to the instant lawsuit,² Defendants point out that disparaging statements
2 directed towards Sheriff Arpaio and MCSO are included in the online publication. Examples
3 of such statements include the following: “[i]n true Arpaio form, his office sent a press
4 release to the media inviting them to this event, proving that he’s more interested in drawing
5 attention to himself than actually doing his job.” (Dkt.#63, at ¶ 17; Exhibit 9.) Among an
6 assortment of epithets, Sheriff Arpaio is called “a relentlessly self-promoting caricature of
7 a sheriff (ever closer to ‘I’m not a real Sheriff, I just play one on TV’ territory), not an actual
8 law enforcement official. The march is yet another stunt to distract people from his
9 incompetent, lawsuit-riddled folly of a department.” (*Id.*) The article further refers to
10 members of the MCSO as “Arpaio and his thugs.” (*Id.*)

11 The Court notes that after independently reviewing the We Can Stop the Hate
12 campaign’s website, it encountered numerous other articles relating to Sheriff Arpaio and the
13 MCSO. For reasons that are altogether unclear, these articles were not made part of
14 Defendants’ factual submission. Interestingly, two such articles directly address the
15 underlying facts of the instant case. Given the nature of the assertions that Defendants have
16 raised against the Court in their recusal motion, the absence of these highly relevant articles
17 from Defendants’ factual submission is somewhat puzzling. The first article encountered by
18 the Court is dated January 20, 2009 and entitled “Join a Call for an Investigation of Sheriff
19 Arpaio.” In this article, NCLR asks members of the public to support a public call for an
20 immediate investigation by the federal government into the legality of the agreement between
21 U.S. Immigration and Customs Enforcement and MCSO, which permits MCSO to work with
22 federal law agencies to aid in the enforcement of federal immigration laws. This agreement
23

24
25 ²Although the article refers to a “parade” of “hundreds of detained immigrants in
26 shackles through the streets of Phoenix,” which seemingly implicates and casts aspersions
27 on Defendants immigration enforcement policy, the thrust of the article is concerned with
28 Sheriff Arpaio’s general treatment of detained prisoners, rather than the legality of an
immigration detention and whether such detentions were predicated upon constitutional
violations. (*Id.*)

1 is referred to as the “§ 287(g)” agreement.³ In the instant lawsuit, Plaintiffs’ claim
2 Defendants have violated their civil rights in the course of carrying out their activities under
3 the § 287(g) agreement, and Plaintiffs seek to enjoin Defendants from enforcing federal
4 immigration laws pursuant to the 287(g) agreement.

5 The second article independently encountered by the Court is dated October 22, 2008
6 and is entitled “Sheriff Joe Strikes Again.”⁴ In this article, NCLR refers to Sheriff Arpaio
7 as “a man who has made a career of humiliating prisoners, harassing Latinos of every variety,
8 wasting taxpayer dollars with dubious results, and having a less than stellar respect for civil
9 rights and due process.” (*Id.*) The article goes on to characterize Sheriff Arpaio as
10 “unrepentant, arrogant, and monumentally disingenuous.” (*Id.*) It also addresses the precise
11 legal and factual issues of the instant lawsuit. Specifically, this article alleges that Sheriff
12 Arpaio and MCSO deputies have engaged in acts of racial profiling. The article states that
13 “Arpaio claims he does not know what racial profiling is since he can't possibly define
14 something he's never engaged in. Here's a hint, Joe: the stuff you're doing to Latinos in
15 Arizona—the ACLU noted in July that ‘Arpaio has made no secret that he believes physical
16 appearance alone is sufficient reason to stop and question individuals regarding their
17 immigration status’—that's racial profiling.” (*Id.*)

18 Another item in Defendants’ factual submission concerns an April 16, 2008 speech
19 by Janet Murguia entitled “Conventional Wisdom.” This speech is also available on the We
20 Can Stop the Hate website. (*Id.* at ¶ 18; Exhibit 10.) While Janet Murguia’s speech refers
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22 ³

23 See We Can Stop the Hate,
24 [http://www.wecanstopthehate.org/site/latest/join_the_call_for_an_investigation_of_sherif](http://www.wecanstopthehate.org/site/latest/join_the_call_for_an_investigation_of_sheriff_arpaio)
f_arpaio (last visited June 1, 2009.)

25 ⁴

26 See We Can Stop the Hate,
27 http://www.wecanstopthehate.org/site/latest/sheriff_joe_strikes_again (last visited June 1,
28 2009.)

1 to “hate groups and extremists pulling the levers and turning the wheels,” these comments
2 were not directed towards any of the Defendants, and no reasonable person could infer that
3 the speech was in any sense about them. In fact, the “Conventional Wisdom” speech, for all
4 practical purposes, appears to be completely unrelated to the instant case, other than the fact
5 that it highlights Janet Murguia and NCLR’s involvement in Latino civil rights issues. (*Id.*)

6 Lastly, Defendants point to Plaintiff Somos America’s website, which lists the
7 organization’s political and social interests. (See Dkt.#63, ¶ 21.) Defendants argue that
8 Somos America’s website demonstrates that it shares a common ideology with NCLR, and
9 presumably with the Court’s sister. Defendants lastly state that Somos America’s website
10 contains a link to Janet Murguia’s “Conventional Wisdom” speech. (*Id.*) .

11 **II. LEGAL STANDARD**

12 Two statutes govern the recusal of district judges: 28 U.S.C. § 144 and 28 U.S.C. §
13 455(a)-(b) . Section 144 applies when a party to a proceeding believes that the district judge
14 “has a personal bias or prejudice either against him or in favor of any adverse party[.]”
15 28 U.S.C. § 144. “Section 144 expressly conditions relief upon the filing of a timely and
16 legally sufficient affidavit.” *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980)
17 (citations omitted). Specifically, the statute provides:

18 The affidavit shall state the facts and the reasons for the belief that bias or
19 prejudice exists, and shall be filed not less than ten days before the beginning
20 of the term at which the proceeding is to be heard, or good cause shall be
21 shown for failure to file it within such time. A party may file only one such
22 affidavit in any case. It shall be accompanied by a certificate of counsel of
23 record stating that it is made in good faith.

24 28 U.S.C. § 144. When a party files a timely and legally sufficient affidavit pursuant to §
25 144 that plainly sets forth a compelling case for recusal, the district judge “shall proceed no
26 further therein, but another judge shall be assigned to hear such proceeding.” *Id.*; *Sibla*, 624
27 F.2d at 867. However, “if the motion and affidavit required by [§] 144 [are] not presented
28 to the judge, no relief under [§] 144 is available.” *Sibla*, 624 F.2d at 868.

Section 455 has two recusal provisions. The first provision, subsection (a), states that
“[a]ny justice, judge, or magistrate of the United States shall disqualify himself [or herself]

1 in any proceeding in which his [or her] impartiality might reasonably be questioned.”
2 28 U.S.C. § 455(a). Subsection (b) provides that any justice, judge, or magistrate shall also
3 disqualify themselves under the following situations:

4
5 (1) Where he has a personal bias or prejudice concerning a party, or personal
6 knowledge of disputed evidentiary facts concerning the proceeding;

7 * * *

8 (4) He knows that he, individually or as a fiduciary, or his spouse or minor
9 child residing in his household, has a financial interest in the subject matter in
10 controversy or in a party to the proceeding, or any other interest that could be
11 substantially affected by the outcome of the proceeding;

12 * * *

13 (5) He or his spouse, or a person within the third degree of relationship to
14 either of them, or the spouse of such a person:

15 * * *

16 (iii) Is known by the judge to have an interest that could be substantially
17 affected by the outcome of the proceeding;

18 28 U.S.C. § 455.

19 Unlike section 144, section 455 “sets forth no procedural requirements.” Sibla, 624
20 F.2d at 867-68. Instead, that section is directed towards the judge, rather than the parties, and
21 is self-enforcing on the part of the judge. Id. Moreover, “section 455 modifies section 144
22 in requiring the judge to go beyond [a] section 144 affidavit and consider the merits of the
23 [recusal] motion pursuant to section 455[.]” Id. at 868. The recusal standards under § 144
24 and § 455 are identical, and decisions interpreting one section are controlling in the
25 interpretation of the other. Id.

26 **IV. DISCUSSION**

27 Because Defendants have moved to recuse the Court under both § 144 and multiple
28 sub-sections of § 455, the Court will address each of these claims in turn. Before turning to

1 the merits of Defendants' individual contentions, the Court will first address whether
2 Defendant's recusal motion has been timely filed.

3 **A. Whether Defendants' Motion is Untimely**

4 Recusal motions brought under either § 144 and § 455 must be filed in a timely
5 manner. See 28 U.S.C. § 144(a) (motions "must be made in a timely fashion"); Davies v.
6 Commissioner, 68 F.3d 1129, 1131 (9th Cir. 1995) (motions under § 455 must also "be made
7 in a timely fashion"). The recusal statute "is not intended to give litigants a veto power over
8 sitting judges, or a vehicle for obtaining a judge of their choice." United States v. Cooley,
9 1 F.3d 985, 993 (10th Cir. 1993). Moreover, "where the facts are known before a legal
10 proceeding is held, waiting to file . . . a motion until the court has ruled against a party is
11 untimely." Summers v. Singletary, 119 F.3d 917, 921 (11th Cir. 1997).

12 Plaintiffs contend that the instant motion to recuse is untimely and has been brought
13 in bad faith, since this case was first assigned to the Court in December 2007 and Defendants
14 waited for over a year before moving for recusal. Plaintiffs cite to examples where other
15 courts have rejected recusal motions when the delays at issue involved appreciably shorter
16 time periods than here. See e.g., United States v. Simmons, 1997 U.S. Dist. LEXIS 22658,
17 *17 (E.D. Cal. July 28, 1997) ("foreclos[ing] relief" for a 10-month delay); Singer v.
18 Waldman, 745 F.2d 606, 608 (10th Cir. 1984) (denying a recusal motion filed over one-year
19 after the complaint).

20 Plaintiffs also take issue with Defendants' assertion of prior ignorance regarding the
21 Court's family background. Plaintiffs argue that Defendants' contentions strain all credulity
22 and should be rejected. According to Plaintiffs, the Court's background, including her
23 sister's position with NCLR, was a matter of public record as far back as 2001, when the
24 *Washington Post* printed an article discussing the Court's relationship with her twin sister.
25 Furthermore, Plaintiffs have submitted a December 2007 front page article from *The Arizona*
26 *Republic*, which details the Court's family history, including Janet Murguia's work at NCLR.
27 Notably, Plaintiffs also point to the fact that this article quoted both Sheriff Arpaio and the
28 Maricopa County Attorney at length. Plaintiffs contend that because the article was focused

1 on MCSO's implementation of a controversial and well-known statewide law sanctioning
2 Arizona employers who hire illegal workers, Defendants must have read the article and been
3 aware of its contents. Plaintiffs argue that from the surrounding circumstances one could
4 reasonably infer that Defendants have intentionally held on to this information, and are now
5 seeking to recuse the Court after having lost the first round of substantive briefing. In other
6 words, Plaintiffs have accused Defendants of knowing about the Court's sister and NCLR,
7 and attempting to use this information as a proverbial ace in the hole, to be pulled out and
8 played when it made convenient trial strategy to do so.

9 Plaintiffs also contend that if the Court is unwilling to make a determination that
10 Defendants possessed actual knowledge regarding the Court's background around the time
11 the lawsuit was filed, then Defendants should at least be charged with 'constructive
12 knowledge' of all facts that were readily available and commonly known during that same
13 period of time. See Drake v. Birmingham Bd. of Edu., 476 F. Supp. 2d 1341, 1347 (N.D.
14 Ala. 2007) (rejecting a recusal motion on timeliness ground where a party could have
15 discovered through reasonable diligence that the judge was a deacon in the same church as
16 plaintiff and her husband). This would, of course, include knowledge that the Court has a
17 twin sister who serves as President and CEO of NCLR.

18 In their reply brief, Defendants adamantly deny that they intentionally waited to file
19 their recusal motion until after the Court had ruled against them on their renewed motion to
20 dismiss. Instead, Defendants claim that they were genuinely unaware of the Court's
21 background during the early stages of the litigation. According to Defendants, the Court's
22 February 10, 2009 ruling is relevant to the timing of their recusal motion only insofar as the
23 Order was the catalyst for local and national media reporting, after which members of the
24 public allegedly began to contact Defendants' offices. Defendants claim that, in actuality,
25 their recusal motion was brought within days of discovering the Court's relationship with her
26 sister. According to Defendants, the Court's Order played little role in the timing of their
27 motion because they were not expecting to win the motion anyway. As Defendants note,
28 there is nothing particularly unusual about a district court denying a motion to dismiss

1 brought under Fed. R. Civ. P. 12(b)(6), particularly when the facts are heavily disputed, as
2 they are here. Defendants invoke the Ninth Circuit holding that “[i]t is axiomatic that the
3 motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted.”
4 See Gilligan v. Jamco Dev. Corp., 108 F.3d 246 (9th Cir. 1997).

5 The Court finds that serious questions exist as to the veracity of the representations
6 made by Defendants, their affiant, and defense counsel as to whether Defendants were aware
7 of the Court’s relationship with her twin sister prior to the February 10, 2009 Order. The
8 Court agrees with Plaintiffs that the timing of Defendants’ motion was bound to raise
9 significant questions as to whether the filing constitutes a bad faith litigation tactic,
10 particularly in light of the December 2007 front page article in *The Arizona Republic*, which
11 discussed the Court’s personal history and includes quotes from a key Defendant and
12 counsel. The Court further agrees that under the circumstances it seems implausible that
13 Defendants were unaware of the Court’s sister’s role at NCLR, and were not at least on
14 notice that there might be a familial relationship between Janet Murguia and the Court.
15 Indeed, Defendants’ own arguments themselves undermine their claim to reasonable
16 ignorance. Noting that the standard for recusal under 28 U.S.C. § 455(a) is applied by
17 considering “a reasonable person with knowledge of all the facts,” Taylor v. Regents of
18 Univ. of Cal., 993 F.2d 710, 712 (9th Cir. 1993), cert. denied, 510 U.S. 1076 (1994),
19 Defendants argue that such a reasonable person would know about Janet Murguia and the
20 activities and interests of NCLR and would question the Court’s impartiality based upon that
21 knowledge. At the same time, Defendants assert that they themselves were not aware that
22 the Court had a twin sister who is the President and CEO of NCLR until some 15 months into
23 the litigation. Effectively, then, Defendants ask this Court to find that they were less aware
24 of the relevant facts than a “reasonable person” would have been. This strains credulity,
25 especially in light of the public record described earlier and the Defendants’ participation in
26 the public debate surrounding the issues that underlie this case. Nevertheless, there is no
27 direct evidence conclusively demonstrating that Defendants or their counsel have made a
28

1 factual misrepresentation to the Court— notwithstanding the improbability of Defendants’
2 claims.

3 Overall, the law supports the denial of Defendants’ recusal motion as untimely.
4 However, because the Court must abide by an unwavering commitment to the perception of
5 fairness in the judicial process, it will not deny the petition on the basis of timeliness and will
6 instead address the substantive questions raised by the request for recusal.

7 **B. Whether The Court Is Actually Biased Against Defendants Under §**
8 **455(b)(1)**

9 Defendants’ first substantive argument is that, pursuant to § 455(b)(1), the Court is
10 actually and personally biased against Defendants. The moving party carries a “substantial
11 burden” of overcoming the presumption that a district court is free from bias. United States
12 v. Denton, 434 F.3d 1104, 1111 (8th Cir. 2006). Under § 455(b)(1), actual bias is defined
13 as “a personal animus or malice that the judge harbors against [a party] of a kind that a fair-
14 minded person could not entirely set aside when judging certain persons or causes.” Hook
15 v. McDade, 89 F.3d 350, 355 (7th Cir. 1996). Recusal for actual bias is required only if the
16 moving party can prove by “compelling evidence” that “a reasonable person would be
17 convinced the judge was biased.” Id.

18 Defendants set forth their bias argument by asserting, without reference to any
19 evidence whatsoever, that the Court “has a natural, personal bias in favor of Plaintiffs, as well
20 as [a] corresponding, natural prejudice against Defendants.” (Dkt.#63, at p. 14.) This bare
21 bones assertion, even in combination with similar statements peppered throughout
22 Defendants’ motion, falls well short of the “compelling evidence” standard promulgated by
23 the Seventh Circuit in Hook. See Hook, 89 F.3d at 355. As Plaintiffs argue in their
24 opposition brief, Defendants can point to nothing the Court has ever done to suggest that it
25 holds an opinion of any party that is wrongful or inappropriate.

26 Moreover, Defendants, in particular Maricopa County and Sheriff Arpaio, are frequent
27 litigants before this Court on a wide variety of civil matters. It is not an overstatement to say
28 that the Court has presided over a countless number of cases involving these Parties, and it

1 has ruled in Defendants' favor on scores of their dispositive motions. The Court can think of
2 no other case involving either Maricopa County or Sheriff Arpaio where it has been accused
3 of harboring a "personal animus or malice" towards either one of them. See Hook, 89 F.3d
4 at 355. In fact, as recently as September 2008, the Court presided over a bench trial where
5 Sheriff Arpaio was the only named Defendant. See Mitchell v. Arpaio, CV-06-1963-PHX-
6 MHM; 2008 U.S. Dist. LEXIS 80179 (D. Ariz. Sept. 19, 2008). After reviewing all
7 admissible evidence in that case, which included live in-court testimony given personally by
8 Sheriff Arpaio, the Court ruled in the Sheriff's favor, holding that "Defendant [was] entitled
9 to judgment dismissing the . . . Complaint with prejudice." Id. at * 16. Certainly, Sheriff
10 Arpaio's victory in the September 2008 Mitchell bench trial, along with many other
11 successfully defended civil actions before this Court, undercuts any claim of actual bias
12 towards him or any of the other Defendants. See Alexander v. Primerica Holdings, 10 F.3d
13 155, 163-64 (3d Cir. 1993) (noting that there is heightened concern regarding judicial recusal
14 in a bench trial where the court is "deciding each and every substantive issue at trial").

15 In light of the record before the Court, Defendants' "natural bias" contention could
16 easily be interpreted as an argument that this Court's alleged bias somehow flows from her
17 racial heritage. Obviously, such an argument would be unwarranted and baseless. Beyond
18 that, the idea that an Hispanic judge should never preside over a controversial case concerning
19 alleged acts of racial profiling purportedly committed against Hispanics is repugnant to the
20 notion that all parties are equal before the law, regardless of race. See Plessy v. Ferguson, 163
21 U.S. 537, 559 (1896) (Harlan, J., dissenting) ("Our Constitution is color-blind, and neither
22 knows nor tolerates classes among citizens.").⁵ Given the absence of any factual foundation
23

24 ⁵In their reply brief, Defendants proclaim that the Court's race played no role in their
25 recusal motion, and that they are not contesting whether a Hispanic judge should ever sit on
26 a case concerning Hispanic civil rights, only that this Court should not sit on this case given
27 the nature of her sister's work and the public positions advocated by her employer. (Dkt#.73
28 at p. 2.) However, Defendants main brief does not appear to be quite as measured as their
reply. For example, Defendants, for reasons that are both unstated and unknown, quoted in
bold the following passage from an article found in the *Phoenix New Times*: "Hmm - we

1 supporting Defendants' claim of bias, and given the Court's extensive history of presiding
2 over disputes involving Sheriff Arpaio, MCSO and Maricopa County in a neutral and
3 impartial manner, the Court does not see how any reasonable attorney could set forth an
4 accusation of actual bias. As the Second Circuit stated, in upholding the imposition of
5 sanctions under Rule 11 of the Federal Rules of Civil Procedure against an attorney, the
6 "suggestion that a judge cannot administer the law fairly because of the judge's racial and
7 ethnic heritage is extremely serious and should not be made without a factual foundation
8 going well beyond the judge's membership in a particular racial or ethnic group." See
9 MacDraw, Inc. v. CIT Group Equip. Fin., Inc., 138 F.3d 33, 37 (2d Cir. 1998).

10 The Court therefore rejects the unsupported assertion that it is actually biased against
11 Maricopa County, Sheriff Arpaio or MCSO, in this or any other case. Further, the Court
12 admonishes counsel for Defendants that in all future pleadings he should adhere scrupulously
13 to the requirements of Fed. R. Civ. P. 11(b) or be prepared to face sanctions for failing to do
14 so.

15 **C. Whether The Court Has An Interest That Could Be Substantially Affected**
16 **By The Outcome Of These Proceedings Under § 455(b)(4)**

17 Under § 455(b)(4), a judge must recuse herself if "individually or as a fiduciary . . .
18 [the court has] a financial interest in the subject matter in controversy or is a party to the
19 proceeding, or any other interest that could be substantially affected by the outcome of the
20 proceeding." 28 U.S.C. § 455(b)(4).

21 Defendants contend that the Court's interest in the well being of her sister constitutes
22 an "other interest" within the meaning of § 455(b)(4), since a victory on the merits for
23 Plaintiffs would, according to Defendants, help to advance NCLR's stated social and political
24 goals, and, in turn, advance Janet Murguia's career. Plaintiffs respond by arguing that courts
25 have narrowly defined "other interests" to include only financial or pecuniary interests of

26 _____
27 can't but wonder what the first Latina judge appointed to the U.S. District Court in Phoenix
28 thinks of the idea that 'physical appearance alone' should merit a police investigation." (See
Dkt.#63 at p. 4.)

1 some variety, see e.g., In re Virginia Elec. & Power Co., 539 F.2d 357, 367-68 (4th Cir.
2 1976), and that a purported interest in the career advancement of one's sibling does not square
3 with any accepted interpretation of the statute. See Guardian Pipeline, L.L.C. v. 950.80 Acres
4 of Land, 525 F.3d 554, 557 (7th Cir. 2008); In re New Mexico Natural Gas Antitrust Litig.,
5 620 F.2d 794, 796 (10th Cir. 1980). Defendants, in reply, cite to In re Virginia Elec. & Power
6 Co., arguing that Plaintiffs' reliance upon that case is misplaced, since in that case the Fourth
7 Circuit specifically stated:

8 Unlike [the term] 'financial interest' [found in § 455(b)(4)], the term 'any other
9 interest' [also found in § 455(b)(4)] is not defined in terms of ownership or in
10 any other manner. It is not easy to conclude what the term means. But it must
11 have been the congressional intent to make an interest of lesser degree than
ownership disqualify. That would seem to be so for otherwise there would be
no purpose in defining financial interest in terms of ownership and failing to
apply such a limitation on any other interest.

12 In re Virginia Elec. & Power Co., 539 F.2d at 367 (emphasis added).

13 With respect to Defendants novel interpretation of § 455(b)(4), the Court does not
14 accept that a sibling relationship can constitute an 'interest' within the meaning of the recusal
15 statute. Notwithstanding Defendants' argument, the language of Virginia Elec. discusses 'any
16 other interest' in terms of the degree of ownership over something that is financial or
17 proprietary in nature. See also E. & J. Gallo Winery v. Encana Energy Serv., Inc., 2004 U.S.
18 Dist. LEXIS 29380, *13-15 (E.D. Cal. Feb. 20, 2004) (citing to Virginia Elec. and
19 characterizing an 'other interest' as decidedly financial, albeit one that is indirect or remote
20 in nature). Moreover, the Court is not aware of any case law that would tend to support
21 Defendants' proffered reading. The Court will not endorse an untethered expansion of the
22 recusal statute to the point where a litigant can engage in a broad based fishing expedition to
23 dig up potentially disqualifying 'interests' that a judge may be accused of having in a
24 particular case. The Court therefore agrees with Plaintiffs that the term 'any other interests'
25 should be interpreted as being limited to financial or pecuniary interests, whether by
26 ownership or some other means.

27 Defendants go on to claim that even if the Court were to apply the more restricted
28 interpretation of § 455(b)(4) advocated by Plaintiffs—that the Court's interest must involve

1 “an investment or other asset whose value depends on the outcome, or some other concrete
2 financial effect”—recusal would still be warranted. (See Dkt.#70 at p. 10.) This, according
3 to Defendants, is because an adverse ruling here would likely cause an appreciable drop in the
4 amount of “public donations” to NCLR, since “the positions, causes and relationships it
5 advances and develops [may not be bearing] fruit in society’s executive, legislative, or judicial
6 branches of government.” (See Dkt.#72 at p. 8.)

7 There is nothing in the record, however, to support Defendants’ speculation that the
8 Court’s sister’s career or her organization would be materially affected by the outcome of the
9 proceedings. Similarly, there is nothing in the record to suggest that the Court has an interest
10 in her sister’s well being that would somehow be inconsistent with the fair resolution of this
11 case, or that the Court has a personal stake in the advancement of her sister’s career that
12 would create an untenable conflict of interest. Furthermore, even if a victory for Plaintiffs here
13 would somehow help to advance Janet Murguia’s interests, nothing in the record suggests that
14 the Court itself would derive any type of financial, proprietary or otherwise tangible benefit
15 from her sister’s potential career advancement. Defendants’ theory that NCLR might stand
16 to lose “public donations” depending on the outcome of this case is not actionable under the
17 relevant sub-section of the recusal statute, since § 455(b)(4) is directed towards interests held
18 by the Court, not its siblings or its siblings’ employer.⁶

19 _____
20 ⁶There is one final issue under § 455(b)(4) which, in an abundance of caution, the
21 Court must raise, even though it was not addressed by either of the Parties. This issue is
22 whether the Court is a potential member of Plaintiffs’ proposed class, and if so, whether
23 recusal is required. In their First Amended Complaint, Plaintiffs redefined their proposed
24 class to include the following individuals: “all Latino persons who, since January 2007, have
25 been or will be in the future, stopped, detained, questioned or searched by MCSO agents
26 while driving or sitting in a vehicle on a public roadway or parking area in Maricopa County,
27 Arizona.” (See Dkt.#18 at p. 24.) Although the Court can be fairly characterized as a “Latino
28 person,” it has not, admittedly, been “stopped, detained, questioned or searched by MCSO
agents” since January 2007. Moreover, the Court does not foresee being stopped,
questioned, detained or searched in the near future, but must concede that it always remains
a theoretical possibility, even if remote. While the Court is mindful of the Ninth Circuit’s
admonition that “no man can be the judge in his own case [or] try cases where he has an
interest in the outcome,” Exxon Corp. v. Heinze, 32 F.3d 1399, 1403 (9th Cir. 1994), the

1 Thus, the Court has no conceivable interest in this case that would serve as a grounds
2 for recusal under § 455(b)(4).

3 **D. Whether The Court's Sister Has An Interest That Could Be Substantially**
4 **Affected By The Outcome Of This Lawsuit Under § 455(b)(5)(iii)**

5 Under § 455(b)(5)(iii), recusal is mandated where "a person within the third degree of
6 relationship . . . [i]s known by the judge to have an interest that could be substantially affected
7 by the outcome of the proceeding." 28 U.S.C. § 455(b)(5)(iii). The phrase "third degree of
8 relationship" has been to interpreted to include a judge's siblings. See generally Harris v.
9 Champion, 15 F.3d 1538, 1571 (10th Cir. 1994) (finding that § 455(b)(5)(iii) should apply to
10 the district court's uncle).

11 Pursuant to this sub-section, Defendants broadly assert that the Court's sister has
12 "ideological, political, social and activist interests" in this lawsuit that are contrary to
13 Defendants' interests. (See Dkt.#63 at p. 5.) In response, Plaintiffs point to the Seventh
14 Circuit case of SCA Serv. v. Morgan, 557 F.2d 110, 116 (7th Cir. 1977), which held that a
15 partner's interest in the reputation and goodwill of his law firm fell within § 455(b)(5)(iii).
16 Id. Plaintiffs argue that the connection between a business's reputation and goodwill and the
17 interests of one of its owners are obviously financial in nature, whereas "ideological, political,
18 social and activist interests" are obviously not. As such, Plaintiffs argue that the definition
19 of 'interests' under § 455(b)(5)(iii) should be co-extensive with the meaning of 'interests'
20 under § 455(b)(4). Plaintiffs note that Defendants have cited no examples where courts have
21 defined the term interests differently under § 455(b)(4) and § 455(b)(5)(iii). See e.g.,
22 Guardian Pipeline, L.L.C., 525 F.3d at 557.

23
24 Court is not presently a member of Plaintiffs' proposed class and cannot state with any
25 degree of certainty whether it will become a member in the future. In any event, even under
26 the unlikely scenario that the Court becomes an unnamed class member, its interest in the
27 outcome of the case would likely be de minimis and too insubstantial to necessitate recusal.
28 See In re New Mexico Natural Gas Antitrust Litig., 620 F.2d 794, 796 (10th Cir. 1980)
(holding that the district court's recusal under § 455(b)(4) was unwarranted where the judge,
like all other consumers in New Mexico, may have benefitted from a lower gas and electric
bill in a class action lawsuit brought against a statewide utility company).

1 The Court agrees with Plaintiffs. It is not at all clear how the word interests could be
2 given two different meanings in the same statute, when used in a nearly identical context. See
3 Ratzlaf v. United States, 510 U.S. 135,143 (1994) (“A term appearing in several places in a
4 statutory text is generally read the same way each time it appears.”). Thus, if the term
5 interests is to be given a consistent meaning throughout § 455, then Defendants have failed
6 to show how the Court’s sister has an interest in the instant lawsuit that can be reasonably
7 characterized as financial or proprietary in nature. And as previously stated, “ideological,
8 political, social and activist” interests are not generally recognized as actionable.

9 Additionally, Defendants have not even suggested, much less explained, how any
10 interest, even under the rejected “social, political, or ideological” standard, might be
11 “substantially” affected by the outcome of this case, particularly when the degree of any
12 potential impact on the interests of the Court’s sister or NCLR seems indirect at best. Neither
13 the Court’s sister, nor her employer, are parties in this case, employed by a party in this case,
14 or have a direct affiliation with a party in this case or with their counsel. It is far too
15 speculative to suggest that because Janet Murguia and NCLR might arguably share common
16 values or pursue the same political or social goals as Plaintiffs and their counsel, that they
17 might be substantially affected by the outcome of this case. See ESPN, 767 F. Supp. at 1080.

18 The Court therefore rejects § 455(b)(5)(iii) as a basis for recusal in this case.
19

20 **E. Whether The Court’s Impartiality Might Reasonably Be Questioned under**
21 **§455(a)**

22 The more difficult question presented by this motion is whether the Court’s impartiality
23 might reasonably be questioned under 28 U.S.C. §455(a). The standard for recusal under
24 §455(a) is “whether a reasonable person with knowledge of all the facts would conclude the
25 judge’s impartiality might reasonably be questioned.” Taylor v. Regents of Univ. of Cal., 993
26 F.2d 710, 712 (9th Cir. 1993), cert. denied, 510 U.S. 1076 (1994).

27 The Court is acutely aware that it owes an independent duty to uphold the integrity of
28 the judicial system, see Liljeberg v. Health Serv. Acquisition Corp., 486 U.S. 847, 860 (1988)

1 (recognizing that the purpose of § 455(a) is “to promote public confidence in the integrity of
2 the judicial process by avoiding even the appearance of impropriety whenever possible”),
3 even when a party’s pleadings are bombastic and its position relies upon inflammatory and
4 meritless forms of argumentation. This Court will not dodge the critical question of whether
5 its continued role in this case is appropriate under the circumstances, even though it would
6 have been entirely justified in denying Defendants’ recusal motion on timeliness grounds
7 alone.

8 Two competing concerns govern the Court’s decision on the merits of this question.
9 First, of course, “[t]he test for recusal under [§ 455(a)] asks “whether a reasonable person with
10 knowledge of all the facts would conclude the judge’s impartiality might reasonably be
11 questioned.” Taylor, 993 F.2d at 712. Critically, “the judge’s actual state of mind, purity of
12 heart, incorruptibility, or lack of partiality are not the issue.” Nichols v. Alley, 71 F.3d 347,
13 351 (10th Cir. 1995) (internal quotations and citations omitted). The test is purely an
14 objective one, which focuses on “whether a reasonable person perceives a significant risk that
15 the judge will resolve the case on [any] basis other than the merits.” In re Mason, 916 F.2d
16 384, 385 (7th Cir. 1990); Preston v. United States, 923 F.2d 731, 734 (9th Cir. 1991) (“The
17 inquiry is whether a reasonable person would have a reasonable basis for questioning the
18 judge’s impartiality, not whether the judge is in fact impartial.”).

19 It must be noted that in the recusal context, a reasonable person means a
20 “well-informed, thoughtful observer,” as opposed to a “hypersensitive or unduly suspicious
21 person.” In re Mason, 916 F.2d at 386. Thus, to the extent that the selected reader comments
22 left on the *Phoenix Business Journal* and *The Arizona Republic* websites have been offered
23 by Defendants to exemplify the public’s reaction to the Court’s continued involvement in this
24 case,⁷ that position is rejected. Judges must decide whether to recuse themselves “not by
25

26 ⁷Of course, not all of the comments cited by the Defendants supported their contention
27 that the public’s reaction to the Court’s February 10, 2009 Order was one of suspicion and
28 mistrust. See e.g. these comments: “Wrong is just WRONG . . . I would have made the same
ruling and MY sister is not connected to La Raza”; and “[t]his judge, like any judge in her

1 considering what a straw poll of the only partly informed man-in-the-street would show[,] but
2 by examining the record facts and the law, and then deciding whether a reasonable person
3 knowing and understanding all the relevant facts would recuse the judge.” In re Drexel
4 Burnham Lambert, Inc., 861 F.2d 1307, 1313 (2d Cir. 1988). “Articles and features in the
5 media suggesting impropriety cannot act as a barometer” of the reasonable person. TV
6 Comme’ns Network, Inc. V. ESPN, Inc., 767 F. Supp. 1077, 1080 (D. Colo. 1991).
7 Obviously, no Court should permit anonymous bloggers to wield a veto power over its
8 participation in any case.

9 Second, courts have “a strong duty to sit” when there is no legitimate reason to recuse.
10 Clemens v. U.S. Dist. Ct. For the Cent. Dist. of Cal., 428 F.3d 1175, 1179 (9th Cir. 2005).
11 A judge should not recuse him or herself based “on unsupported, irrational, or highly tenuous
12 speculation; were he or she to do so, the price of maintaining the purity of appearance would
13 be the power of litigants or third parties to exercise a negative veto over the assignment of
14 judges.” In re United States, 666 F.2d 690, 694 (1st Cir. 1981).

15 As the Parties acknowledge in their filings, this is a high profile case, one that is not
16 likely to be free from controversy, regardless of who is presiding over it. The issue of
17 whether Maricopa County, Sheriff Arpaio and MCSO ought to be enforcing federal
18 immigration laws elicits strong feelings, both within the local Phoenix community as well as
19 across the nation. Further, allegations of violations of Constitutional rights often arouse
20 strong public passions. These passions are no doubt shared by both those who allege the
21 violations and those who dispute them. The Court also recognizes the controversial and
22 sensitive nature of the immigration issue generally within the country. Nothing in this set of
23 circumstances would, by itself, warrant recusal under the appropriate standard.⁸

24 _____
25 position, simply upheld the legal standard for a motion to dismiss. There were enough facts
26 alleged to let the case go to the next step.”

27 ⁸In the Court's view this case is not about whether sound public policy—which is set
28 by the political branches and not by the courts—favors having a local Sheriff and his
deputies enforce federal immigration laws. If it were, this case would never have withstood

1 Nonetheless, the Court recognizes its somewhat unique position, in that the Court's
2 twin sister plays a prominent public role in advocating policy positions that diametrically
3 oppose those taken by Defendants. At the same time, the statute does not require the Court
4 to recuse itself from a matter merely because a case concerns Hispanic civil rights, our
5 nation's immigration policy, or some related matter. Section 455(a) does not require such a
6 cautious approach on the part of a judge, and the Court must be careful to avoid allowing her
7 sister's public profile to serve as a proxy for a race-based recusal challenge. Also providing
8 context to this inquiry is the rather unremarkable yet often overlooked proposition that "[a]
9 district judge is not a sterile creature who dons judicial robes without any prior contacts in the
10 community but rather is very likely to be a man or woman with a broad exposure to all kinds
11 of citizens of all shades of persuasion and background." United States v. Suren, 1992 U.S.
12 App. LEXIS 38216, *16 (9th Cir. Aug. 18 1992) (Memorandum Opinion) (quoting In re
13 Searches Conducted on March 5, 1980, 497 F. Supp. 1283, 1290 (E.D. Wis. 1980) (internal
14 citations omitted)).

15 Both Parties devote a great deal of space in their briefs to arguing over the proper
16 interpretation of two leading U.S. Supreme Court cases dealing with recusal motions brought
17 under § 455(a): Microsoft v. United States, 530 U.S. 1301 (2000) and Cheney v. United States
18 Dist. Ct., 541 U.S. 913 (2004). Microsoft concerned whether Chief Justice Rehnquist should
19 have recused himself from a case where his son, a lawyer who represented Microsoft in
20 potentially related anti-trust matters, might have stood to gain from a favorable ruling towards
21 the company. Id. at 1301-02. After rejecting the possibility that his son might have an
22 interest that could be substantially affected by the outcome of the case, the Chief Justice
23 addressed whether his continued involvement created the appearance of impropriety. Id.

24
25

even the flimsiest motion to dismiss. Instead, this lawsuit concerns only whether Defendants
26 have violated Plaintiffs' rights under the Fourth Amendment, Fourteenth Amendment, and
27 the Arizona State Constitution, while carrying out their otherwise lawful duties to enforce
28 federal immigration laws. The Court has not been asked to pass judgment on the wisdom of
the § 287(g) authorization, nor would it do so if asked.

1 Ultimately, Chief Justice Rehnquist decided against recusal. In so doing, he noted that a
2 “decision by this Court as to Microsoft’s antitrust liability could have a significant effect on
3 Microsoft’s exposure to antitrust suits in other courts . . . [but] [e]ven our most unremarkable
4 decision interpreting an obscure federal regulation might have a significant impact on the
5 clients of our children who practice law.” Id. at 1303. The Chief Justice went on to comment
6 on the Supreme Court’s unique institutional role, stating:

7 [I]t is important to note the negative impact that the unnecessary
8 disqualification of even one Justice may have upon our Court. Here—unlike
9 the situation in a District Court or a Court of Appeals—there is no way to
10 replace a recused Justice. Not only is the Court deprived of the participation
11 of one of its nine members, but the even number of those remaining creates a
12 risk of affirmance of a lower court decision by an equally divided court.

10 Id.

11 Cheney involved an attempt to force the recusal of Justice Scalia from a case
12 concerning whether the executive branch was required to disclose the identity of persons who
13 had served on the Vice President’s energy task force. See Cheney, 541 U.S. at 914-16. The
14 substance of the recusal motion focused on a hunting trip that Justice Scalia had taken with
15 Vice President Cheney and others. At issue, among other things, was that the host of the trip
16 had ties to the energy industry and that members of the hunting party, including Justice Scalia,
17 had traveled to their final destination on the Vice President’s government-issued airplane. Id.
18 In deciding against recusal, Justice Scalia stated that media commentary constituting “a blast
19 of largely inaccurate and uninformed opinion cannot determine the recusal question.” Id. at
20 924. Justice Scalia further commented that recusal might be advisable, “if I were sitting on
21 a Court of Appeals,” where the recused judge’s place on the panel “would be taken by another
22 judge and the case would proceed normally.” Id. at 915. Echoing the sentiments of Chief
23 Justice Rehnquist, Justice Scalia opined that the Supreme Court operated quite differently,
24 since, “[t]he Court proceeds with eight Justices, raising the possibility that, by reason of a tie
25 vote, it will find itself unable to resolve the significant legal issue presented by the case.” Id.

26 The helpfulness of the Microsoft and Cheney opinions is debatable in this case. Chief
27 Justice Rehnquist’s Memorandum, although quite informative in its analysis of when a close
28 family member’s potential interest in a case might cast aspersions on a judge’s apparent

1 neutrality, is the writing of only one Justice. It is not the opinion of the Court. As such,
2 Microsoft is not binding precedent. Similarly, Justice Scalia's Memorandum in Cheney
3 discussing his personal friendship with Vice President Cheney and the media's coverage of
4 their hunting trip, is non-precedential.

5 More importantly, those cases do not deal with the recusal of a trial court judge. When
6 a federal district court judge recuses herself from a case, another judge can easily step into her
7 place. Because every district court judge has taken the same oath to faithfully apply the law,
8 which includes applying binding precedent from the U.S. Supreme Court as well as the law
9 of the relevant circuit, very little prejudice results from a district court judge's recusal. On
10 the other hand, as Chief Justice Rehnquist and Justice Scalia have observed, the U.S. Supreme
11 Court is sui generis, or one of a kind. There are only nine members, and when one recuses,
12 only eight will sit. As was noted, the votes of at least five Justices are required to overturn a
13 lower court opinion. Therefore, when that body is short one or more of its members, there is
14 a substantial risk that an important legal issue will go completely unresolved, without a
15 majority opinion. No other case, certainly not one from the federal district court, presents an
16 analogous situation.

17 One of the focal points of the Parties' arguments in this case is the notion that a judge
18 might be seen as unwilling to take a position inconsistent with her sibling's ideological,
19 political or social interests. Defendants argue that a reasonable observer, one who is apprised
20 of all the facts, might assume that siblings, like the Court and her sister, share common
21 pursuits, points of view or even political ideology. Defendants further claim that siblings who
22 are personally close are likely to influence each other's thinking, even indirectly. When the
23 siblings are twins, no less identical twins, according to Defendants, the likelihood of
24 confusion is even greater. Plaintiffs respond by arguing that people frequently disagree with
25 their siblings, even with their identical twin, on a wide variety of issues and that no reasonable
26 person would question this Court's ability to do so here. Additionally, the Plaintiffs argue, the
27 mere fact that Janet Murguia is President and CEO of an organization that advocates for the
28 rights of Latinos would not cause a reasonable person to question the Court's impartiality.

1 In weighing the Parties' competing views, there is little, if any, guidance from case
2 law. The Parties have not cited to—and the Court is not aware of—a similar case, where
3 nothing more than a sibling's political or social affiliations could arguably create the
4 appearance of impropriety for a judge under § 455(a). Cognizant that a "reasonable person"
5 is well-informed and thoughtful, the Court agrees with Plaintiffs that no reasonable person
6 would automatically ascribe the views of one sibling to another. It is certainly part of the
7 common experience that brothers and sisters often disagree about all sorts of issues, regardless
8 of how personally close they are or how often they speak on the telephone. There is no reason
9 to believe that this reality would change when the siblings are identical twins. A reasonable
10 and impartial observer apprised of all the facts would not conclude that identical twins are
11 more likely to share a common view point or interests than other siblings, much less that a
12 twin who is a judge would be incapable of impartiality. The Court is not aware of any
13 evidence that would tend to show that it has been unduly influenced by her sister's political
14 or social views. Moreover, there is no proof that the Court, in light of her sister's stated
15 positions, would be hesitant to rule against Plaintiffs, if the law so required. That the Court's
16 identical twin is on record as opposing the enforcement of federal immigration laws by Sheriff
17 Arpaio and MCSO does not by itself mandate the Court's recusal under § 455(a). If the only
18 grounds for recusal were Janet Murguia's role as President and CEO of NCLR and the public
19 comments that she has made pursuant to that role, the Court's inquiry would stop there.
20 However, this is not the case, as the Court must also address the issue of the We Can Stop the
21 Hate website, which was launched by NCLR while the Court's sister was serving as President
22 and CEO as a campaign to address acts of discrimination against Latino communities
23 throughout the United States.

24 Whether the Court's impartiality might reasonably be questioned based on the content
25 of these internet-based articles is a difficult issue. Obviously, the Court has no connection to
26 the We Can Stop the Hate campaign. There is also nothing in the record to suggest that the
27 Court's sister is the author of the offending articles or that she had any personal involvement
28

1 in their publication. Yet, the Court is mindful that it must be vigilant to avoid even the
2 slightest appearance of impropriety.

3 Without question, these articles greatly disparage MCSO deputies and personally
4 attack Sheriff Arpaio. As has been previously pointed out, these articles refer to Sheriff
5 Arpaio as a “relentlessly self-promoting caricature,” who has “less than stellar respect for civil
6 rights and due process,” and who is “unrepentant, arrogant, and monumentally disingenuous.”
7 With respect to the MCSO, its deputies are referred to as “thugs,” while the department is
8 generally characterized as a “lawsuit-riddled folly” of an agency, among other things. In the
9 context of a motion for recusal, when comments like these originate from a website that is
10 associated with the Court’s sister or the organization that she leads, they cannot be taken
11 lightly.

12 Besides being insulting, the We Can Stop the Hate online articles speak directly to
13 MCSO’s decision to enforce federal immigration laws pursuant to its § 287(g) authority. In
14 fact, these articles specifically assert that MCSO has failed to adequately safeguard basic
15 constitutional rights through its departmental procedures, and that MCSO deputies have
16 engaged in wide-spread acts of racial profiling and have blatantly violated the Fourth
17 Amendment rights of detained immigration suspects by predicated stops on “physical
18 appearance alone.” The instant litigation sets out to determine these exact questions, i.e.,
19 whether the Fourth and Fourteenth Amendment rights of Latino persons in Maricopa County
20 have been violated.⁹

21 In applying the objective standard of § 455(a), the Court believes that whether a
22 reasonable person apprised of all relevant facts would question its impartiality based on
23 circumstances surrounding the publication of the We Can Stop the Hate website is a close call.

24
25 ⁹The Court must also note that a prominent picture of Janet Murguia sits immediately
26 adjacent to each We Can Stop the Hate online article. Even though the picture is correctly
27 labeled as belonging to Janet Murguia and not the Court, the Court seeks to avoid the risk of
28 confusing the Court’s picture with that of her sibling. The Court must consider the possibility
that a reasonably well-informed and impartial observer might mistake the Court for her
identical twin sister.

1 On the one hand, the views of the Court's sister and her organization cannot be fairly imputed
2 to the Court, and there is nothing in the record to support an inference that the Court would
3 be unwilling to issue a ruling contrary to her sister's publicly-held positions. On the other
4 hand, much of the commentary contained in the articles is highly disparaging of specific
5 Defendants in this case, and the website takes a strong stand on disputed factual matters lying
6 at the heart of the litigation.

7 The United States Court of Appeals for the Ninth Circuit has instructed that when a
8 case is close, the balance should tip in favor of recusal. United States v. Holland, 519 F.3d
9 909, 911 (9th Cir. 2008) (quoting United States v. Dandy, 998 F.2d 1344, 1349 (6th Cir.
10 1993)). No Court should tolerate even the slightest chance that its continued participation in
11 a high profile lawsuit could taint the public's perception of the fairness of the outcome.
12 Certainly, this Court is unwilling to take such a risk. Thus, because at the district court level
13 all doubts should be resolved in favor of recusal when the issue is close, strictly on the sole
14 issue remaining—whether the Court's impartiality might reasonably be questioned under
15 Section 455 (a)—the Court, in an abundance of caution, will recuse itself from this matter.

16 **Accordingly,**

17 **IT IS HEREBY ORDERED** granting Defendants' Motion for Recusal. (Dkt.#63.)

18 **IT IS FURTHER ORDERED** directing that the Clerk reassign this case to another
19 judge in the District of Arizona by random lot.

20 DATED this 15th day of July, 2009.

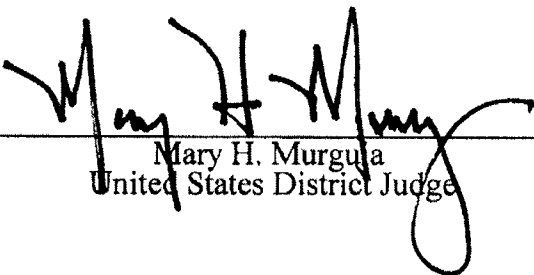
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24 Mary H. Murgula
25 United States District Judge
26
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28

EXHIBIT 13

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega Melendres,)	
et al.,)	
)	
Plaintiffs,)	No. CV 07-2513-PHX-GMS
)	
vs.)	Phoenix, Arizona
)	July 31, 2015
Joseph M. Arpaio, et al.,)	2:03 p.m.
)	
Defendants.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
Status Conference Volume 1, Pages 1-70
(Sealed Proceedings Omitted)

Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

A P P E A R A N C E S

For the Plaintiffs:

American Civil Liberties Union Foundation
Immigrants' Rights Project
By: Cecillia D. Wang, Esq.
39 Drumm Street
San Francisco, California 94111

American Civil Liberties Union Foundation
Immigrants' Rights Project
By: Andre Segura, Esq. - Telephonically
125 Broad Street, 18th Floor
New York, New York 10004

American Civil Liberties Foundation of Arizona
By: Daniel J. Pochoda, Esq.
By: Joshua David R. Bendor, Esq.
P.O. Box 17148
Phoenix, Arizona 85011

Covington & Burling, LLP
By: Tammy Albarran, Esq. - Telephonically
By: Lauren E. Pedley, Esq.
1 Front Street, 35th Floor
San Francisco, California 94111

Covington & Burling, LLP
By: Stanley Young, Esq.
333 Twin Dolphin Drive, Suite 700
Redwood Shores, California 94065

For the Defendant Maricopa County:

Walker & Peskind, PLLC
By: Richard K. Walker, Esq.
By: Charles W. Jirauch, Esq.
SGA Corporate Center
16100 N. 7th Street, Suite 140
Phoenix, Arizona 85254

For the Defendant Joseph M. Arpaio:

Jones, Skelton & Hochuli, PLC
By: A. Melvin McDonald, Jr., Esq.
By: Joseph T. Popolizio, Esq.
2901 N. Central Avenue, Suite 800
Phoenix, Arizona 85012

A P P E A R A N C E S

For the Defendant Joseph M. Arpaio and Maricopa County Sheriff's Office:

Iafrate & Associates
By: Michele M. Iafrate, Esq.
649 N. 2nd Avenue
Phoenix, Arizona 85003

For the Movants Christine Stutz and Thomas P. Liddy:

Broening, Oberg, Woods & Wilson, PC
By: Jathan P. McLaughlin, Esq.
P.O. Box 20527
Phoenix, Arizona 85036

For the Movants Maricopa County Attorney's Office and Maricopa County Attorney William Montgomery:

Ridenour Hienton, PLLC
By: April M. Hamilton, Esq.
Chase Tower
201 N. Central Avenue, Suite 3300
Phoenix, Arizona 85004

For Deputy Chief Jack MacIntyre:

Dickinson Wright, PLLC
By: Gary L. Birnbaum, Esq.
1850 North Central Avenue, Suite 1400
Phoenix, Arizona 85004

For Chief Deputy Gerard Sheridan:

Mitchell Stein Carey, PC
By: Lee D. Stein, Esq.
1 Renaissance Square
2 North Central Avenue, Suite 1900
Phoenix, Arizona 85004

For Executive Chief Brian Sands:

Lewis, Brisbois, Bisgaard & Smith, LLP
By: Greg S. Como, Esq.
2929 N. Central Avenue, Suite 1700
Phoenix, Arizona 85012

For Lieutenant Joseph Sousa:

David Eisenberg, PLC
By: David Eisenberg, Esq.
2702 N. 3rd Street, Suite 4003
Phoenix, Arizona 85004

A P P E A R A N C E S

For Timothy J. Casey:

Adams & Clark, PC

By: Karen Clark, Esq.

520 E. Portland Street

Phoenix, Arizona 85004

Also present:

Commander John Girvin, Deputy Monitor - Telephonically

Chief Raul Martinez, Deputy Monitor - Telephonically

Executive Chief Brian Sands

Chief Deputy Gerard Sheridan

Deputy Chief Jack MacIntyre

Lieutenant Joseph Sousa

P R O C E E D I N G S

THE CLERK: Civil case number 07-2513, Melendres and others versus Arpaio and others. This is the time set for status conference. Counsel, please announce for the record.

14:03:06

MS. WANG: Good afternoon, Your Honor. Cecillia Wang of the ACLU for the plaintiffs.

MR. YOUNG: Good afternoon, Your Honor. Stanley Young for the plaintiffs.

MR. BENDOR: Good afternoon. Josh Bendor of the ACLU for plaintiffs.

14:03:17

MS. PEDLEY: Lauren Pedley of Covington & Burling for plaintiffs.

MR. POCHODA: Dan Pochoda of the ACLU for plaintiffs.

MS. IAFRATE: Good afternoon, Your Honor. Michele IafRATE on behalf of defendant.

14:03:28

MR. POPOLIZIO: Good afternoon, Your Honor. Joseph Popolizio on behalf of Sheriff Arpaio.

MR. WALKER: Good afternoon, Your Honor. Richard Walker of Walker & Peskind on behalf of that portion of Maricopa County government embodied in the Board of Supervisors, the county manager, and the employees reporting to them.

14:03:40

MR. COMO: Greg Como on behalf of Brian Sands, who is present in the courtroom today, Your Honor.

14:03:55

1 MR. McDONALD: Good afternoon. Mel McDonald, special
2 appearance for Sheriff Joe Arpaio.

3 MR. JIRAUCH: Charles Jirauch of Walker & Peskind on
4 behalf of Maricopa County.

5 MR. STEIN: Good afternoon, Your Honor. Lee Stein on
6 behalf of Jerry Sheridan, who's present in the courtroom.

14:04:10

7 MR. BIRNBAUM: Good afternoon, Your Honor. Gary
8 Birnbaum on behalf of Jack MacIntyre, and Mr. MacIntyre's
9 present in the courtroom as well.

10 MR. McLAUGHLIN: Good afternoon, Your Honor. Jake
11 McLaughlin on behalf of Thomas Liddy and Christine Stutz.

14:04:25

12 MR. EISENBERG: Good afternoon, Your Honor. David
13 Eisenberg on behalf of Lieutenant Joseph Sousa, who's in the
14 courtroom in the gallery.

15 MS. HAMILTON: Good afternoon, Your Honor. April
16 Hamilton, Ridenour Hienton, on behalf of the Maricopa County
17 Attorney's Office and Maricopa County Attorney William
18 Montgomery.

14:04:38

19 MS. CLARK: Good afternoon, Judge. Karen Clark,
20 ethics counsel for Tim Casey.

14:04:50

21 THE COURT: Do we have monitors on the line?

22 DEPUTY MONITOR GIRVIN: Here, Your Honor. Deputy
23 Monitor Girvin on the line.

24 DEPUTY MONITOR MARTINEZ: And good afternoon, Your
25 Honor. Raul Martinez, deputy monitor, on the line.

14:05:06

1 THE COURT: Do we have anybody else on the line?

2 MR. SEGURA: Andre Segura of Covington & Burling on
3 behalf of plaintiffs.

4 MS. ALBARRAN: Good afternoon, Your Honor. Tammy
5 Albarran from Covington & Burling on behalf of the plaintiffs. 14:05:18

6 THE COURT: All right. Good afternoon.

7 Mr. Como, you filed with me a -- sort of a protective
8 concern about trial date. Have you resolved that?

9 MR. COMO: Yes, Your Honor. We settled that other
10 case this week so I no longer have a conflict. 14:05:32

11 THE COURT: All right. Let me just say I'm going to
12 ask the parties to hold some dates and we're going to hold the
13 dates because we need flexibility. After I announced trial
14 dates, or dates for the resumption of the hearing -- and I
15 think we can hold those dates, at least -- the monitor informed 14:05:51
16 me that he will be unable to make any of those dates. I don't
17 think we need the monitor here to have the hearing; he has key
18 members that are perfectly adequate to cover for him. But it
19 did strike me that to the extent we are having him evaluate the
20 MCSO self-investigations and to the extent that is an issue in 14:06:10
21 this lawsuit, the monitor may well need -- somebody may well
22 want him to testify at some point, so we're going to need to
23 set additional hearing dates.

24 Further, I'm going to raise some additional issues,
25 which may require -- or at least will give the parties the 14:06:25

1 option to explore different issues if they wish to. And I do
2 not want to continue this hearing forever, I suspect no party
3 wants to continue this hearing forever, so I'm going to throw
4 out some dates right now and ask you to hold them -- I asked
5 you to bring your calendars -- and if you know that those won't
6 work for you, please tell me now.

14:06:41

7 In addition to September 22nd through September 25th
8 and September 29th through October 2nd, which were the dates
9 that I already told everybody to hold, can people hold the 8th
10 and 9th of October? Any problem with the 8th and 9th of
11 October?

14:07:00

12 I will tell you that the monitor is not available on
13 those dates, either, but if we need them we can have them, if
14 they're available, so I'll have everybody hold those dates.

15 October 13 and 14, the monitor is available on those
16 dates, if in fact his testimony is going to be needed in this
17 matter. Does that work for everybody?

14:07:18

18 Seeing no objections.

19 And then we could also go the 27 through the 30th.
20 However, before -- and look at that. Before I discuss the 27th
21 through the 30th, we could also go November 2nd through the 6th
22 and the 12th and 13th. But I already have a firm trial set on
23 that date. I've checked with the parties, and they have no
24 objection to giving up those dates if they can have the 27
25 through the 30 dates of October, the end of October.

14:07:39

14:08:00

1 So I would ask the parties to hold the 13th through
2 the -- October 8th in addition to the dates already held: 8, 9,
3 13, 14, 27 through 30, November 2, 3, 4, 5, and 6, November 10,
4 November 12, and 13. If anybody has any problem holding those
5 dates, please let me know right now.

14:08:22

6 As soon as I can -- as soon as we can get preferences,
7 as soon as I go through what I intend to do today, we will try
8 to free up the dates for you so you're not just sitting on
9 those dates; I realize you're all busy people. But I also
10 intend -- this won't be a surprise to anybody -- to hold status
11 conferences fairly regularly, almost every week, so that we can
12 make adjustments as we go along.

14:08:37

13 The other thing that occurred to me is that even
14 though Mr. Warshaw is not available on some dates, so we'll
15 have to hold some dates out of the current trial date, it
16 occurred to me, after considering some of the things that
17 Mr. Masterson said last week, that really there may be whole
18 areas, after the monitors do the interviews they're now doing
19 and after they provide you with transcripts of those
20 interviews, there may be a whole host of areas we can eliminate
21 by stipulation that won't require a lot of trial testimony.

14:08:53

14:09:12

22 For example, and maybe I'm misremembering this, but if
23 the material provided by Mr. Montgomery, the database that he
24 supposedly took from the CIA that included the 50 hard drives
25 that I had taken -- or that the sheriffs provided under my

14:09:36

1 order last week, if in fact there's a stipulation by all sides
2 that that material is junk, then I don't see why we have to
3 spend a whole lot of time on other issues that may involve the
4 50 hard drives but don't relate to this lawsuit. It does seem
5 to me that they relate to the lawsuit to the extent that they 14:09:56
6 are junk and to the extent they were told -- or Mr. Montgomery
7 was told -- or told the MCSO what they were and what he was
8 using them for. But we don't have to -- if there's a
9 stipulation by all sides that they're junk, we don't have to
10 waste a whole lot of time messing around with stuff like that. 14:10:13

11 I offer that merely as an example; I don't offer it as
12 a mandate. It may well be that when we look in the 50
13 hard drives there is something that's relevant, although that
14 is a huge amount of material, so it seems to me that would be
15 one area where we could just sort of eliminate a lot of 14:10:30
16 problems.

17 It seems to me, too -- and I received a summary from
18 the monitor that I think you all heard last week. I haven't
19 looked at the investigations or seen the transcripts, but as I
20 said last week, the transcripts are available to any party or 14:10:49
21 specially appearing party who wants them. But it occurs to me
22 that other issues that come forth in the transcripts may not be
23 seriously disputed by any side, and if we can just arrive at
24 stipulations, we may be able to shorten the resumed hearing
25 considerably. I just offer that for what it's worth. 14:11:07

1 And so with that being said, I did notice that
2 Maricopa County and the Sheriff's Office filed this week a
3 Statement For Proposed Deadlines Re Document Production.

4 Now, let me ask, it is more convenient for my
5 schedule, because I usually do criminal matters on Monday, I do
6 trials Tuesday, Wednesday, Thursday, sometimes Friday, I keep
7 Friday open for my civil dates, it's much more convenient for
8 me to do regular status conferences on Fridays, and you have
9 set the deadlines, Ms. Iafate, Ms. Walker, you've set the
10 deadlines for document productions on Friday.

14:11:30

14:11:49

11 I'm wondering if we can move them one day earlier, so
12 that when I have the status conference, I can get a report as
13 to whether or not you produced the documents that were due the
14 day before, so that we don't have a whole lot of slippage that
15 I tolerate in terms of the document productions.

14:12:04

16 Do you understand what I'm saying?

17 MR. WALKER: Yes, Your Honor.

18 MS. IAFRATE: Yes.

19 THE COURT: Is it possible to take the deadlines that
20 you've suggested -- and I'm not --

14:12:15

21 I'll hear from you, Ms. Wang, in terms of whether or
22 not, you know, you have any concerns about that, but I'm just
23 asking if it's possible to take those deadlines and move them a
24 day earlier so that the very next day I'll be here. I'll know
25 whether you've produced the documents. If you haven't, we can

14:12:27

1 deal with the matter.

2 MS. IAFRATE: Your Honor, that's fine today with the
3 deadline for certain documents and they have been provided, so
4 with the exception of today's deadline, you're asking that the
5 ones in the future be moved back one day.

14:12:41

6 THE COURT: Right.

7 MS. IAFRATE: That's fine.

8 THE COURT: From Friday to Thursday.

9 MR. WALKER: And the County has no objection, either,
10 Your Honor.

14:12:48

11 THE COURT: All right. Does the plaintiff have any
12 concerns with that or with the proposal generally offered by
13 the County and the sheriff and the MCSO?

14 MS. WANG: No, Your Honor. And we appreciate the
15 production before each status conference; that makes good
16 sense.

14:13:00

17 THE COURT: All right. So let me just say that
18 last -- not last week but last status conference, which was
19 about closer to two weeks ago, we discussed both Mr. Walker's
20 and Ms. Iaftrate's objection and motion to the class definition.
21 I indicated that I wasn't going to rule on that at that time,
22 so for those of you who look at your docket and you're worried
23 about outstanding little gavels that show I haven't ruled, I'm
24 not going to rule on that until we decide what is necessary for
25 reparations to those who were harmed by the violation of my

14:13:26

14:13:50

1 preliminary injunction. I don't see any need to do that. It's
2 still an open issue, except to the extent that I did rule that
3 it's relevant and needs to be turned over, and I assume that
4 you are incorporating that in your schedule, Ms. Iafrate,
5 Mr. Walker.

14:14:09

6 MS. IAFRATE: Your Honor, that is in the schedule as
7 it relates to item 6, so a deadline has been set, subject to
8 our objections that you already heard last time.

9 THE COURT: All right. So document 1085 as well,
10 which is the motion to compel production of Internal Affairs
11 reports, looks to me like that is also taken care of in
12 defendants' statement re proposed deadlines.

14:14:24

13 Ms. Wang?

14 Ms. Iafrate, did you want to address that?

15 MS. IAFRATE: I was just going to say, Your Honor, we
16 met and conferred regarding all of the outstanding motions to
17 compel issues as well as the document requests, and, yes, the
18 outstanding request for the IA has been addressed in our
19 recommended deadline.

14:14:39

20 THE COURT: Ms. Wang?

14:14:51

21 MS. WANG: Your Honor, there's one outstanding issue
22 that we're currently meeting and conferring on, and that is how
23 to limit the definition of items, Internal Affairs
24 investigations going back to 2008. That may be a different
25 item in your list, but --

14:15:09

1 THE COURT: No, no. That is an item that is in
2 defendants' proposed deadlines. I think it's, like, number 9
3 or number 10.

4 MS. WANG: Right. We have agreed in principle, I
5 think, on how to limit that request, and Ms. Iafrate's
6 requested that we reduce that to writing for her, and we're in
7 the process of doing so.

14:15:23

8 THE COURT: All right. Now, let me --

9 Oh. Go ahead, Ms. Iafrate.

10 MS. IAFRATE: Your Honor, I think that in response to
11 your previous question of me, it's number 8 on the deadlines
12 that talks about the -- essentially, what we were calling
13 spin-off IAs, the remaining 19 or 20, plus the two that were
14 originally sent to Mr. Vogel and then returned, so that also
15 has been addressed in the deadline.

14:15:34

14:15:51

16 THE COURT: Yes, it seems to me that 7 and 8 address
17 the matters you've just addressed, both 7 and 8.

18 Yes, Mr. Eisenberg.

19 MR. EISENBERG: Your Honor, I don't mean to interrupt
20 the flow but I've checked my calendar. I do have a case in
21 this courthouse starting November the 3rd, United States versus
22 Aceves-Rivera. It's a multi-defendant case, but I can avow to
23 the Court that it will actually go on that date.

14:16:04

24 THE COURT: Okay. Well, I appreciate your pointing it
25 out. I'll keep it in mind and remember you pointed it out, but

14:16:21

1 to the extent that we get next billing, I want next billing in
2 case that case goes away.

3 MR. EISENBERG: Yes, Your Honor.

4 THE COURT: All right. Thank you.

5 Let's take up, then, Mr. Casey's objection to
6 number 10, Ms. Iafrate.

14:16:32

7 Ms. Clark, are you here to address that?

8 MS. CLARK: I'm here, Your Honor, for any questions
9 you may have.

10 THE COURT: Well, it does seem to me, Ms. Iafrate,
11 that Ms. Clark's objection is well taken. If you have the
12 documents, if you're asserting the privilege, then I'm not sure
13 that Mr. Casey ought to be obliged to assert the privilege of
14 his own time and expense.

14:16:46

15 MS. IAFRATE: Understood, Your Honor. I provided
16 documents responsive to discovery requests and asserted the
17 privilege as it relates to the subset of documents that I have
18 that involved Tim Casey. Then there was a subpoena duces
19 tecum and a subpoena that went to Tim Casey and his counsel.
20 They provided me their documents that they gathered. I went
21 through it for a privilege, created the privilege log, and then
22 sent it back to Ms. Clark, because it's the subpoena that goes
23 to her that these documents would be responsive to. I've
24 already done the privilege identification and created the log
25 on behalf of my client.

14:17:00

14:17:19

14:17:36

1 THE COURT: All right. Ms. Clark?

2 MS. CLARK: Yes, Your Honor. I don't really have much
3 to add to the objection that we filed. I mean, Tim Casey was
4 withdrawn from this matter in December of last year and this is
5 a dispute between parties. 14:17:49

6 THE COURT: Let me just see if I understood what
7 Ms. Iafrate just told me, because maybe I didn't.

8 Ms. Iafrate, are you authorizing Mr. Casey to turn
9 over every document except for the documents that are listed in
10 your privilege log? 14:18:03

11 MS. IAFRATE: That is correct of the documents that
12 were provided to me by his counsel, I went through them to
13 assert my client's privilege and that has been done.

14 THE COURT: All right. So those documents can be
15 provided immediately as well as the privilege log can be
16 provided immediately. 14:18:13

17 Is that correct, Ms. Iafrate?

18 MS. IAFRATE: They were sent back to Tim Casey's
19 counsel for that purpose.

20 THE COURT: Okay. So you have no objection if
21 Mr. Casey produces all documents that they provided -- that
22 they identified to you that are not contained in the privilege
23 log you sent back to them. 14:18:25

24 MS. IAFRATE: Correct.

25 THE COURT: And you have no problem if they provide 14:18:38

1 the privilege log.

2 MS. IAFRATE: I would assume that they would.

3 THE COURT: All right. Can you do that immediately,
4 Ms. Clark?

5 MS. CLARK: Judge, I can get that done on Monday,
6 August 3rd.

7 THE COURT: All right. Thank you.

8 Is that satisfactory to the plaintiffs?

9 MS. WANG: Your Honor, the production on the 3rd is
10 satisfactory. I just want to flag two issues for the Court.

11 We have raised two issues about Tim Casey's production
12 in response to our subpoena duces tecum, both with Ms. Clark
13 and with Ms. Iafate. First, we believe that Mr. Casey's
14 search for the documents was inadequate. We have documents
15 from the defendants that should be in Mr. Casey's possession.
16 For example, if they're e-mails that went to him that were not
17 produced or listed in his privilege log that was provided from
18 Ms. Clark.

19 Second, we also believe that there are some privilege
20 issues remaining. We're still meeting and conferring about
21 that. We intend to take that up again once we get the new
22 production on August 3rd, but I alert the Court just because
23 there may be some additional matters we want to take up with
24 you.

25 THE COURT: Let me just suggest, then, that in

14:18:46

14:18:56

14:19:19

14:19:37

14:19:51

1 addition to the subpoena that you serve Mr. Casey you serve a
2 document production request to the defendants that encompasses
3 those same subpoena matters, and then to the extent that the
4 defendants have maintained or have matters in their file that
5 Mr. Casey has not retained, they will have to assert an
6 additional privilege log.

14:20:05

7 Is that a fair suggestion?

8 MS. WANG: That certainly is. I believe we already
9 have done so, but we will double-check that.

10 THE COURT: All right. Because I assume, Ms. Clark --
11 well, you represented, I think, in your pleading, that
12 Mr. Casey had reviewed everything that he had retained.

14:20:17

13 MS. CLARK: That's correct, Judge.

14 THE COURT: Okay. So if you have that issue,
15 Ms. Wang, you can act as you deem best fit, but you'll provide
16 what you have on August 3rd together with the privilege log
17 given you by Ms. Iafrate?

14:20:30

18 MS. CLARK: Absolutely, Judge.

19 THE COURT: All right.

20 Yes. Ms. Wang, anything else?

14:20:41

21 MS. WANG: No, Your Honor. Thank you.

22 THE COURT: All right. We do have issues, of course,
23 that arise from the documents that came to light last week, and
24 I guess before we take those up I'm going to check with the
25 monitors as to any developments this week in terms of new

14:21:05

1 documents found, a concern about whether or not we've got all
2 the documents or tried to get all the documents that were
3 identified last week, and any other issues of potential
4 cooperation.

5 Are you there? Do you hear me?

14:21:23

6 DEPUTY MONITOR MARTINEZ: Yes, Your Honor.
7 Chief Martinez, deputy monitor, and hopefully you can hear me
8 fine in the courtroom also.

9 Yes, we do have a couple of issues to bring up --

10 THE COURT: Chief?

14:21:33

11 DEPUTY MONITOR MARTINEZ: -- to the Court.

12 THE COURT: Chief?

13 DEPUTY MONITOR MARTINEZ: Yes, sir.

14 THE COURT: We can hear you here, but the speakerphone
15 always provides a bit of distortion. And so the court reporter
16 can get down everything you're saying, I'm going to ask you to
17 speak as slowly and distinctly as possible so that we can all
18 hear you, please.

14:21:43

19 DEPUTY MONITOR MARTINEZ: Yes, Your Honor. We do have
20 a couple of issues to bring up to the Court's attention, the
21 first one being last Friday, the 24th, Chief Warshaw and myself
22 went to PSB and met with Lieutenant Kratzer, wherein we were
23 taking a look, our first look at the 1459 slash 1500 IDs.

14:21:58

24 During that meeting with Lieutenant Kratzer, a
25 question was asked if there were any other instances of found

14:22:21

1 IDs, cases with IDs, that was not mentioned at the Monday
2 briefing with PSB, not to include the 1500. Lieutenant Kratzer
3 mentioned yes, that there was one additional instance where 42
4 additional IDs were found in the training kit that belonged to
5 one of the sergeants, and that they had opened an IA case on 14:22:47
6 the IA number 15-0475.

7 Our concern is neither the order of the 24th that you
8 filed about the hard drives nor the order of the 27th has the
9 two DR numbers which match the casing that PSB informed us on
10 Monday covering those 42 IDs. That's one of the concerns -- 14:23:15

11 THE COURT: All right.

12 DEPUTY MONITOR MARTINEZ: -- that we need to get ahold
13 of those IDs just last week, just as the other two DR numbers
14 where IDs were -- were gathered.

15 THE COURT: All right. If you have other concerns, 14:23:29
16 hang on to them for a second.

17 Ms. Iafrate?

18 MS. IAFRATE: Your Honor, I do believe that that IA
19 number and the information was provided to the monitors during
20 a weekly report. They might be backlogged in their weekly 14:23:44
21 reports because we issued a -- or you issued what we perceived
22 to be a stay. So once the stay was lifted, we pushed out all
23 of the back weekly reports, and I believe that that case is in
24 the weekly report. But if you want to issue another order to
25 encompass this DR, I can go back and make certain that it was 14:24:06

1 indeed previously provided.

2 THE COURT: I'll do that. If I understood the chief
3 correctly, it's an IA number --

4 MS. IAFRATE: It is.

5 THE COURT: -- not a DR number.

14:24:17

6 MS. IAFRATE: It is, but a lot of IAs have DRs going
7 with it, yes.

8 THE COURT: All right. The only thing I want to make
9 sure of is that we get the plaintiffs, all the identifications
10 of members of the plaintiff class, to the extent that's still
11 possible, that are roaming around anywhere in the MCSO. So if
12 these haven't been provided, I will issue an order directing
13 you to provide them. If you can determine that they've already
14 been provided pursuant to my other orders, then please identify
15 which ones they are.

14:24:27

14:24:43

16 MS. IAFRATE: Very well.

17 THE COURT: Okay. Chief, anything else?

18 DEPUTY MONITOR MARTINEZ: Yes, Your Honor. Just one
19 last statement about this Lieutenant Kratzer instance. I'm not
20 doubting what Ms. Iaftrate is saying. There's a lot of
21 information that was dumped in the -- during the -- or after
22 the stay period, but I want to make sure that they were --

14:24:56

23 THE COURT: You know what?

24 Chief. Chief. Chief. Chief. You're starting to go
25 too fast and we can't follow you. You have to go slowly.

14:25:09

1 DEPUTY MONITOR MARTINEZ: All right, sir. I
2 apologize.

3 THE COURT: It's all right.

4 DEPUTY MONITOR MARTINEZ: I want to make sure that
5 what we're asking for is not just a copy of the IA number, but 14:25:18
6 copies of those 42 IDs.

7 THE COURT: Right. Well, I think that what the order
8 will direct, just because I've -- the monitor's now -- I'm
9 sorry, not the monitor, the marshal is now holding those IDs,
10 I'll just direct that the IDs be given to the marshal and so we 14:25:34
11 have them in one central location.

12 Will that meet your concerns, Chief?

13 DEPUTY MONITOR MARTINEZ: Yes, sir, it would.

14 And if I may, there are a couple of other issues that
15 we have communicated with Ms. Iafrate that she has informed us 14:25:54
16 of some confidentiality that is involved with those issues, so
17 she may want to address the Court before we speak about it.

18 THE COURT: Ms. Iafrate.

19 MS. IAFRATE: Your Honor, the monitors and I discussed
20 this issue this morning. I asked them to please not present 14:26:11
21 this issue in open court, as it would potentially compromise an
22 investigation. I don't know if Your Honor would be amenable to
23 clearing the courtroom regarding this issue or if we could take
24 it up some other way rather than in open court, because there
25 is a confidentiality issue that I'm concerned about regarding 14:26:34

1 one of the monitor's requests.

2 THE COURT: What is the confidentiality issue?

3 Pursuant to what statute or privilege?

4 MS. IAFRATE: It's a concern regarding compromising a
5 criminal prosecution. 14:26:49

6 THE COURT: All right. Let me make this suggestion.

7 I'm going to go through everything else that we have
8 to go through, and then at the end I will hear you under seal
9 on your representation that you believe that there may be
10 issues that should be taken up under seal. If I determine that 14:27:11
11 there is no reason to seal, then I'll open the transcript.

12 Will that be acceptable to you?

13 MS. IAFRATE: That's fine, Your Honor.

14 THE COURT: All right. Does anybody else have any
15 objection to proceeding in that fashion? 14:27:23

16 MS. WANG: No object -- excuse me. No objection, Your
17 Honor.

18 THE COURT: All right. Chief, anything else?

19 DEPUTY MONITOR MARTINEZ: Yes, Your Honor. There was
20 a second document that we are waiting for Ms. Iafate to -- to 14:27:34
21 release. It had to do with some minutes of a meeting.

22 Ms. Iafate stated she was reviewing it for any privileges, and
23 we have not received any -- any response since our last
24 conversation with her as to whether it's going to be a release
25 in full or we are going to get a redacted version of that 14:27:59

1 document.

2 THE COURT: All right. And that request was made to
3 Ms. Iafrate when?

4 DEPUTY MONITOR MARTINEZ: It was made in writing
5 yesterday after an interview that we conducted, and we had a
6 conversation about this document this afternoon. 14:28:08

7 THE COURT: Can you identify the document at all, like
8 who -- who was the author, and what it was prepared in
9 conjunction with?

10 DEPUTY MONITOR MARTINEZ: Yes, Your Honor. During an 14:28:29
11 interview of Lauren Sanchez, who is, I believe, an analyst
12 assigned to PSB for the Maricopa County Sheriff's Office. And
13 she was the scribe at the Friday, July 17th, meeting with PSB
14 and counsel in preparation for the monitor's visit.

15 THE COURT: All right. And you're reviewing that for 14:28:49
16 attorney-client privilege, Ms. Iafrate?

17 MS. IAFRATE: Yes, Your Honor. Actually, I received
18 the request after-hours last night; I didn't see it until this
19 morning.

20 THE COURT: No problem. I'll give you a reasonable 14:29:00
21 time to review it. If you are going to redact any of it, would
22 you please file a privilege log indicating -- or the document
23 itself may indicate these actions, but just if you're going to
24 redact any of it, let us know.

25 MS. IAFRATE: Very well. 14:29:12

1 THE COURT: Anything else, Chief?

2 DEPUTY MONITOR MARTINEZ: Your Honor, I believe
3 Commander Girvin has an item.

4 THE COURT: All right. Chief Girvin?

5 DEPUTY MONITOR GIRVIN: Yes, Your Honor. Can you hear 14:29:21
6 me okay?

7 THE COURT: Yes, we can hear you. But again, as with
8 Chief Martinez, you need to speak slowly, because there is some
9 distortion because of the speakerphone.

10 DEPUTY MONITOR GIRVIN: Yes, Your Honor, I will do 14:29:33
11 that.

12 As you're aware, Your Honor, that we are in possession
13 of a hard drive which we received from MCSO pursuant to our
14 initial document request in the wake of the April hearings. We
15 received that hard drive from Chief Knight. Chief Knight was 14:29:50
16 designated by the defendants as our point of contact for these
17 document requests.

18 Chief Knight was interviewed this past week by our
19 monitor and during the course of that interview it was revealed
20 that the hard drive that was initially provided to us, which is 14:30:11
21 purported to have the Montgomery investigation material, is
22 actually a compilation of material from a couple of different
23 sources.

24 The first source is a hard drive that apparently
25 Detective Mackiewicz brought into Chief Knight's office when he 14:30:33

1 responded to Chief Knight's request that he provide, you know,
2 the relevant documents. And when Detective Mackiewicz was in
3 Chief Knight's office, he asked Chief Knight and was granted
4 access to his office computer so that Detective Mackiewicz
5 could access the department's H drive.

14:30:56

6 The H drive is really a shared drive that every
7 employee in the office will let -- can get to and use to store
8 documents, so it functions like a hard drive, but it's a large
9 drive that's maintained by the office and you have to log into
10 it. So Detective Mackiewicz was allowed to log into his
11 section of the H drive on Chief Knight's computer.

14:31:16

12 So we were informed that the contents of the
13 hard drive which we were provided immediately after the April
14 hearing is actually a compilation of material that Detective
15 Mackiewicz had on the personal hard drive which he brought to
16 Chief Knight's office and material which he downloaded to --
17 from the H drive. That was downloaded to two hard drives: One
18 was provided to us, and the other we were told was provided to
19 Ms. Iafrate.

14:31:36

20 During questioning then Chief Knight volunteered that
21 he still has in his possession, and has had since that meeting,
22 the original hard drive that Detective Mackiewicz brought to
23 his office. So we are requesting that we be allowed to take
24 possession of that hard drive, which is really the source
25 material, or supposedly the source material, for a copy that we

14:31:56

14:32:16

1 were provided in April.

2 THE COURT: Let me ask you some questions to make sure
3 I understand. Detective Mackiewicz brought in a hard drive, or
4 the material from the H drive was downloaded to the hard drive?

5 DEPUTY MONITOR GIRVIN: He brought in a hard drive, a
6 separate external hard drive, and he also brought in three
7 binders' worth of paper which we needed and are now in
8 possession of.

14:32:44

9 THE COURT: Well, again, I got you said that he
10 brought in a hard drive, and then I thought I heard you say he
11 brought in three binders' worth of paper material?

14:32:58

12 DEPUTY MONITOR GIRVIN: He did. He entered the office
13 with the external hard drive and three binders' worth of paper.
14 And the paper we're not questioning; we believe we have
15 received copies of that pursuant to our request.

14:33:15

16 THE COURT: Okay. But you don't have the original
17 hard drive, and you don't know what was on the H drive that may
18 have been downloaded by Detective Mackiewicz?

19 DEPUTY MONITOR GIRVIN: The hard drive which we have
20 in our possession is alleged to contain the contents of the
21 original hard drive that Detective Mackiewicz went into
22 Chief Knight's office with, and whatever material Detective
23 Mackiewicz added to that hard drive that he felt was responsive
24 and pulled off of the H drive.

14:33:33

25 THE COURT: All right. Ms. Iafrate.

14:33:52

1 Let me ask first: Do you know whether or not we've
2 received the copies of these three binders, the material in
3 these three binders?

4 MS. IAFRATE: Yes, Your Honor.

5 THE COURT: Do you know if it has been designated as
6 material from the three binders provided by Detective
7 Mackiewicz?

14:34:04

8 MS. IAFRATE: I don't know how it was labeled, Your
9 Honor, but I assume that it was labeled to be identified that
10 way.

14:34:14

11 THE COURT: Okay. Can you check on that for me?

12 MS. IAFRATE: Yes.

13 THE COURT: Do you have any objection if I order the
14 marshals to take possession of the hard drive that is in
15 Chief Knight's possession?

14:34:22

16 MS. IAFRATE: Yes, Your Honor.

17 THE COURT: And what is that objection?

18 MS. IAFRATE: Your Honor, this hard drive not only
19 contains information regarding the Montgomery case, but it also
20 contains other materials.

14:34:33

21 What Chief Knight and Sergeant Mackiewicz -- or
22 Detective Mackiewicz attempted to do was be responsive to your
23 request during that hearing to provide everything that was
24 responsive as to the Montgomery investigation. And that is why
25 not only did they not stop with the paper or the hard drive;

14:34:52

1 they also searched the H drive to ensure that they had the
2 comprehensive amount of documents responsive to your request.
3 So that's why they went the --

4 THE COURT: And they provided everything but the 50
5 hard drives?

14:35:09

6 MS. IAFRATE: You know, Your Honor, that Chief Knight
7 was not aware of those 50 hard drives.

8 THE COURT: I don't know anything. And I'm not
9 accusing him of anything. I haven't seen the contents of the
10 interview, and that may be well what he said. But I am at this
11 point not prepared to take anybody's word for what was what.
12 Let me propose this and see if it's acceptable to you.

14:35:20

13 I'm going to order the marshals to take possession of
14 that hard drive. I'm going to, as I have in the past, order
15 them to let nobody have access to it till a forensic copy is
16 made. And then I will give you first access so that you can
17 review it and claim as privileged or nonresponsive material
18 that's in the hard drive.

14:35:40

19 Is that acceptable to you?

20 MS. IAFRATE: Yes, Your Honor. Could I provide these
21 myself to the marshals rather than having the marshals go over
22 and seize them?

14:35:56

23 THE COURT: Well, first off, I realize that it was
24 characterized places as a seizure. I just want to say that it
25 was in response to my order. I provided an order last week. I

14:36:12

1 have no basis to believe that -- and the marshals have informed
2 me that there was no resistance from the MCSO.

3 And so I believe that part of the reason I issued the
4 order, Ms. Iafate, is you had chain of custody concerns and
5 they were very valid, and I think I put that in the order, too. 14:36:30

6 And so just to not -- to avoid any possible chain of custody
7 concerns I'm going to have the marshals receive the hard drive
8 directly from Chief Knight.

9 But I'm not characterizing it as a seizure, I'm
10 characterizing it as a response to my order, which is what I 14:36:46
11 believe last week was, too. Is that satisfactory?

12 MS. IAFRATE: Well, I would still object to the
13 process, Your Honor, but I understand what you're saying.

14 The other problem that I have is this hard drive is in
15 a secure location, and Chief Knight is the custodian of it 14:37:00
16 because he received it from Detective Mackiewicz. Chief Knight
17 is not in today. Could we make some arrangements so that the
18 marshals can come Monday, seeing that it's Friday afternoon?

19 THE COURT: Well, I'm going to order that the marshals
20 contact you today. 14:37:20

21 MS. IAFRATE: That's fine.

22 THE COURT: And that if they receive assurances that
23 nothing's going to hap -- they receive adequate assurances that
24 it's in a secure location, then we can have it on Monday.

25 MS. IAFRATE: Very well. 14:37:32

1 THE COURT: If they don't, I'm going to send them over
2 to get it.

3 MS. IAFRATE: Understood.

4 THE COURT: All right. Anything else, Chief Girvin?

5 DEPUTY MONITOR GIRVIN: Just on that topic, one more 14:37:40
6 request or observation, Your Honor. If you could direct that
7 that hard drive from this point forward not be plugged into any
8 computing device whatsoever. You indicated that you're going
9 to order a forensic copy be made, so we're just concerned that
10 any -- plugging into any computer device at this point would 14:37:59
11 alter the metadata on the hard drive.

12 THE COURT: Any objection to that, Ms. Iaftrate?

13 MS. IAFRATE: No, Your Honor.

14 THE COURT: All right.

15 Are those your issues, Chief Martinez? 14:38:15

16 DEPUTY MONITOR GIRVIN: Yes, Your Honor.

17 THE COURT: All right.

18 DEPUTY MONITOR MARTINEZ: Yes, sir.

19 THE COURT: All right. I'm going to address something
20 that pertains to the material seized last week and some of what 14:38:29
21 Chief Warshaw characterized as the contents of the interviews
22 that caused him concern and caused him to call for the
23 emergency hearing which resulted in my order directing the
24 acquisition of the 50 hard drives, which I take it you're not
25 contesting were materials Montgomery provided to the MCSO, and 14:38:51

1 the identifications.

2 Am I wrong about that statement, Ms. Iafrate?

3 MS. IAFRATE: That we're not contesting that they
4 were --

5 THE COURT: That the 50 hard drives contain material
6 that Montgomery provided to the MCSO.

14:39:03

7 MS. IAFRATE: Your Honor, we still have not evaluated
8 that issue.

9 THE COURT: All right.

10 MS. IAFRATE: So it's a non-answer to you. I do not
11 have an answer for you.

14:39:14

12 THE COURT: That's fine. In any case, I directed
13 their confiscation and they were provided, as I said, without
14 incident. And I have not read -- and as far as I know, they
15 haven't even been transcribed -- some of the interviews that
16 Chief Warshaw described to me last week. And so I obviously
17 don't know what their contents were, and I recognize that
18 everyone has a right to be heard before any decisions are made,
19 and I expect that I will provide that.

14:39:30

20 But I'm going to lay out a little bit what my concerns
21 were about some of those issues so that everybody is aware of
22 what my concerns were, and are, and what I intend to do about
23 those concerns and what I would propose that we do.

14:39:52

24 The very first injunctive order that I entered in this
25 matter back in October 2013 says: Defendant shall ensure that

14:40:25

1 there was -- that the issue was resolved.

2 I issued two more orders in the next week in response
3 to your objections and concerns, document 1032 and document
4 1046, indicating that I expected the immediate production of
5 all such documents. And then -- and I believe all parties have 14:53:07
6 this, but if they don't, I have it here and I'm going to give
7 every party a copy -- Chief Knight provided to you,
8 Ms. Iafrate, and to the Monitoring Team, a response, request by
9 request, of his response to our request for those documents.

10 There's a lot them that relate to the documents, but 14:53:30
11 the one that I'm most concerned about today -- and by the way,
12 it's my understanding from the monitor that you provided these
13 documents to everybody. Not just to the monitor; you put them
14 in the drop box and they went to everybody. If they didn't, I
15 don't see why they shouldn't go to everybody, but that is their 14:53:49
16 understanding.

17 So if that's incorrect and there's some reason I
18 shouldn't read from this, can you tell me that now?

19 MS. IAFRATE: Your Honor, I cannot avow that they went
20 to the plaintiff, but there's no problem with you reading from 14:54:00
21 that document.

22 THE COURT: All right. So one of the many requests
23 that the monitor asked for you to immediately provide is "the
24 work product of Dennis Montgomery, including memoranda,
25 reports, notes, photographs from the Seattle, Washington 14:54:11

1 investigation, and activities referred to in the article by
2 Stephen Lemons in the Phoenix New Times dated June 4th, 2014."

3 And the response from Chief Knight is: "Deputy
4 Mackiewicz delivered all files in the possession of MCSO
5 provided by Dennis Montgomery on an external hard drive. This 14:54:28
6 information was transferred to another external hard drive and
7 provided to monitor Anders and counsel Michele Iafrate on April
8 24th and April 27th, 2015."

9 MS. IAFRATE: Your Honor, could you tell me the
10 number of that -- 14:54:43

11 THE COURT: You know what? It's not Bates numbered.

12 MS. IAFRATE: No, no, no. Didn't he say -- didn't
13 Chief Knight indicate what request he's responding to?

14 THE COURT: ITR 9.

15 MS. IAFRATE: Thank you. 14:54:51

16 THE COURT: Number 9. But in this document,
17 Ms. Iafrate, which, again, I think you provided to everybody,
18 there's a number of requests that relate to that. I'm only
19 reading one, because I don't want to relate them all, because I
20 think that covers it. 14:55:05

21 So after last Friday, when I went home and turned on
22 the news and I saw a report in which Mr. Popolizio was standing
23 next to Chief Sheridan and Chief Sheridan said they didn't
24 provide these documents because they'd never been asked for, I
25 realized that I didn't share that view. That he may be 14:55:20

1 Monitor has timely, full and direct access to all documents
2 that the Monitor reasonably deems necessary to carry out its
3 duties, 145.

4 And then in 146 it specifies that the defendants may
5 withhold from the Monitor any documents or data protected by 14:40:43
6 the attorney-client privilege, acknowledging that that
7 privilege does exist, but, of course, if a -- if the defendants
8 decline to provide that access, they have to give a privilege
9 log, and that's in 146.

10 And in 147 it says -- paragraphs, I'm referring to -- 14:40:57
11 Defendants shall ensure that Plaintiffs' representatives and
12 their consultative experts and agents shall have full and
13 direct access to all of Defendants' documents upon reasonable
14 notice.

15 We, as I've set forth before and don't have to go into 14:41:16
16 in great detail, have encountered several circumstances which
17 have required adjustment of the monitor's authority, including
18 when we discovered -- including when the MCSO elected to handle
19 matters itself that arose from the Armendariz-Perez
20 allegations; and further, when we discovered that the 14:41:37
21 preliminary injunction order had not been complied with at all.
22 And I set forth an order on November 20th, 2014, which said:
23 "An adequate internal affairs division must be willing to
24 engage in thorough examination and, in appropriate cases,
25 agency exposure to discipline and painful public 14:41:55

1 accountability. Of course, to make an appropriate assessment
2 of whether MCSO's PSB is so acting, the Monitor must
3 necessarily have complete access to Defendants' internal
4 affairs investigations. This includes familiarity with the
5 manner in which MCSO pursues an investigation -- be it criminal 14:42:12
6 or administrative in nature -- the investigation's initial and
7 continuing scope in light of the information the investigation
8 uncovers, the performance of the investigators, and the kind of
9 discipline -- if any -- ultimately imposed at its conclusion."

10 There's a number of other provisions in that order 14:42:30
11 which relate to the requirement that the monitor have full and
12 complete access to documents, both in the Internal Affairs
13 Division and of the MCSO, as was the first order. However, on
14 that November 20th order I provided it to all parties and said
15 we're going to operate under this order from henceforth, but 14:42:51
16 I'm going to allow you to raise objections and complaints.

17 And Ms. Iafrate, you did, in the December 4th hearing,
18 and I want to read that -- part of that with you.

19 "Ms. Iafrate: Thank you, Your Honor.

20 "Regarding the November 20th order, on page 16 where 14:43:07
21 you're talking about orders concerning ongoing
22 investigations --"

23 And I say: "Yes."

24 "-- at line 10 it specifically talks about this case
25 and PSB dealing with the constitutional rights of the members 14:43:19

1 of the plaintiff class are guaranteed by MCSO going forward."

2 And I say: "Yes."

3 And you say: "And, of course, MCSO would agree with
4 that, that that was the structure of this litigation."

5 And then we make sure that we're talking about the
6 same order and so you say: "So at page 17 of the November 20th
7 order you talk about the monitor must necessarily have complete
8 access to defendants' Internal Affairs investigations."

14:43:33

9 And I said: "Um-hum."

10 And you said: "Our concern, Your Honor, is that some
11 internal investigations do not deal with the underlying
12 litigation in this matter, so I'd ask that that be curtailed
13 ever so slightly to coincide with what you wrote on page 16,
14 where it deals with investigations of MCSO personnel as it
15 relates to either compliance with the order, meaning your
16 injunctive order, or the constitutional rights of members of
17 the plaintiffs' class."

14:43:50

18 And I tell you: "Show me what line you're talking
19 about."

20 And you say: I'm talking about page 17, line 14."

14:44:18

21 And I tell you: "How about if I do this, Ms. Iafrate?
22 One of the things we've discovered, and I think we've all
23 discovered it, is that there's lots of things that relate to
24 this case and to this -- to this suit in terms of Internal
25 Affairs investigations, PSB investigations. That doesn't mean

14:44:34

1 that everything does; I acknowledge that.

2 "How about if I put in here -- I don't want to limit
3 the monitor's right to have complete access to the PSB because
4 you don't know what you don't know until you know it. But I
5 will put in here the right for you to object, saying that the
6 monitor is investigating matters that can have no relation to
7 this lawsuit and raise the matter to me.

14:44:54

8 "Would that be acceptable to you?"

9 And you say: "That would be acceptable."

10 And that, in fact, is precisely what I did in document
11 825 filed December 9, 2013. I reference our colloquy and I
12 note that upon the recommendation of your parties I'm going to
13 change my order, and I say: "In its Order, the Court indicated
14 that the 'Monitor must necessarily have complete access to
15 Defendants' internal affairs investigations. Defendants are
16 further authorized to file objections with the Court if and
17 when they dispute the Monitor's involvement in particular
18 investigative processes as bearing no relation to the Monitor's
19 evaluation of whether the Professional Standards Bureau is
20 operating in compliance with the Supplemental Permanent
21 Injunction or other Orders of this Court, or as otherwise
22 exceeding the power vested in the Monitor by the Court..." I
23 go on; I'm not going to read it.

14:45:08

14:45:30

14:45:44

24 In February of 2015 I entered an order requiring
25 expedited discovery that says: "Copies of identification

14:46:01

1 documents seized by MCSO personnel from apparent members of the
2 Plaintiff Class" must be provided."

3 Now, we had -- and again, I don't mean to
4 mischaracterize it, and it wasn't under oath, but it was a
5 characterization of the monitor about what some of the 14:46:21
6 witnesses said they were informed in a Friday meeting prior to
7 the monitor's visit that certain identifications located and
8 found that did contain members of the plaintiffs' class were
9 not to be discussed with the monitor, or something to that
10 effect. 14:46:39

11 That violates my orders, and it does so in a direct
12 way. It violates my orders both about what had to be
13 disclosed, and it violates my orders about the access that the
14 monitor has, and should be given, to information in the
15 Internal Affairs Division. 14:46:59

16 And if in fact there is any effort by the MCSO to
17 subvert those orders by lying to the monitor or telling him
18 less than the truth, or informing or instructing their people
19 to do so, that is in fact even a more serious and gross
20 violation of my order. I'm not saying that happened, and 14:47:18
21 again, everybody has an opportunity to be correctly heard.

22 As it pertains to the 50 hard drives that apparently
23 were also -- or at least there was also some information in
24 interviews that there was 50 hard drives that were provided by
25 Montgomery, and not only was there information provided in the 14:47:45

1 interviews, but I noticed when I lifted the documents from
2 under seal that Ms. Wang provided in her response to the motion
3 to compel, I noticed that a number of those documents discussed
4 50 hard drives of downloaded material received from
5 Mr. Montgomery.

14:48:03

6 And we received some information that such materials
7 existed and we found 50 hard drives, and again, Ms. Iafrate,
8 I'm not representing what they are one way or the other. I
9 recognize that they may not be hard drives provided by
10 Mr. Montgomery. Even if they are, I believe, at least based on
11 the testimony I've heard, and it is at least suggested by the
12 e-mails that Ms. Wang provided, that they may be junk, and they
13 may not be what Mr. Montgomery represented to the MCSO they
14 were. I don't know that, either. I recognize there's all
15 kinds of possibilities out there.

14:48:22

14:48:47

16 But I will point out that in the sheriff's testimony
17 on April 23rd I directed him very directly: "... to the extent
18 that you have any control over any funding records, over any
19 reports, over any communications, over any overtime records,
20 travel documentation, any e-mails of any and all people
21 involved in the threat assessment unit or anywhere else, any
22 communications from and to Montgomery, any computers or phones,
23 cell phones or other information that in any way is relevant or
24 related to this investigation, I want you to direct your people
25 to put a hold on it immediately and preserve it. And that

14:49:02

14:49:18

1 includes any documentation or numbers that would relate to
2 Mr. Montgomery's confidential status.

3 "You understand that?"

4 And the sheriff: "Your Honor, are you referring to
5 this investigation with the monitors and --"

14:49:31

6 And I said: "No, no. I'm referring to the
7 investigation that Mr. Montgomery was undertaking with
8 Mr. Mackiewicz, Mr. Anglin, Mr. Zullo, anybody else from your
9 staff, anybody else from the MCSO, or anyone else from the
10 posse. I want all records that in any way relate to it, all
11 electronic data or anything else, or the financing, funding of
12 that operation, all phone records, e-mails, reports, I want it
13 all preserved."

14:49:47

14 "And I think I will send the monitor to begin taking
15 possession of those records and we'll do it confidentially,
16 imminently. But I don't want in the interim any of those
17 records lost, inadvertently or otherwise."

14:50:03

18 The next day, Chief Deputy Sheridan was testifying and
19 ran into a snafu. We'd agreed on a procedure whereby you could
20 have folks over there, and you did. You cooperated.

14:50:23

21 Ms. Iafrate, you had attorneys over there doing rushed review,
22 because that's what I'd ordered that you do. And we ran into a
23 problem where folks were not providing my monitor with the
24 documents, and they wouldn't provide them until you looked at
25 then, approved them, and Bates stamped them, and I told them

14:50:40

1 that under the circumstances, that is not what I ordered, and
2 you will remember that I set out a separate procedure.

3 Chief Sheridan was still on the stand, and so I
4 said -- we went through the objections and I said: "And so I'm
5 going to require that those documents be released immediately. 14:50:58
6 I mean, not without your review. Whoever your designated
7 attorney is, get over there and review them. We'll make some
8 sort of a list of the documents that have been provided, and
9 then we can -- we can match them up when you Bates stamp them.
10 But I want those documents provided." 14:51:14

11 And then I turned to Deputy Chief Sheridan and I said:
12 "Do you have an issue with that, Chief, that we need -- that we
13 need to discuss or concerns that you wanted to raise that I
14 should consider?"

15 And he said: "No, sir." 14:51:26

16 And then I said: "Okay. Is that okay with you?"

17 And he said: "Yes, sir."

18 Then you may remember that after the lunch break I
19 said: "Before we begin, apparently there's been a
20 miscommunication. Chief, I know you were over trying to 14:51:38
21 facilitate or getting those documents over the noon hour, and
22 as soon as you left, folks indicated they wouldn't give the
23 documents until Ms. Iafrate had a chance to review them and
24 they were Bates stamped, which I think we already resolved
25 prior to lunch." 14:51:53

1 "Is there anything you can do to facilitate that
2 production right away, Chief? Who is the captain that said he
3 wouldn't give them?"

4 And then there was an indication that it was
5 Chief Knight. 14:52:02

6 And then I said: "I'm really trying -- the thought
7 occurred to me over lunch, Chief. I'm not trying to use these
8 today. There's going to be too much other stuff. But I really
9 do think it's important to secure the documents. So I'm still
10 going to hold to that order, unless you have some reason, 14:52:14
11 Chief, why I shouldn't. I think it's very important, in light
12 of the history of the case, that we get the documents in a set
13 today."

14 And then, Ms. Iafrate, you said: "From what I
15 understand, Your Honor, at one point there were three requests, 14:52:25
16 and now I think that there are way more requests --"

17 And I said: "Yeah."

18 You said: "-- so it's a moving target."

19 I said: "Yeah, it wouldn't surprise me if the
20 requests are coming in fast and furious, because my folks want 14:52:35
21 to get this arms around everything today. So that may be part
22 of the confusion. But I'm sure I was clear, and I suspect that
23 the chief deputy went over to try to facilitate that, and there
24 must be some confusion, so if you'll call Chief Knight and
25 we'll wait for you." You called Chief Knight and told me that 14:52:50

1 correct, he certainly has an opportunity to be heard, but I
2 thought that it was well that I point out my concerns about
3 what is happening, in light of the attorney-client privilege
4 that's been invoked I have concerns about what is happening and
5 who is giving the direction not to discuss to the monitor. 14:55:43

6 But again, you have a legitimate right to
7 attorney-client privilege at some level which -- which is lost,
8 and I'm not saying that you gave that advice, I don't make that
9 assumption, but I have all of those concerns.

10 Now, let me tell you what I propose to do about it. I 14:56:00
11 do not want to offset the relief that members of the plaintiff
12 class are entitled to, nor do I want to delay any longer
13 corrective action that I think must occur within the Maricopa
14 County Sheriff's Office and revisions to the injunctive relief
15 order, if that ought to happen. 14:56:18

16 Further, I recognize that this is a civil contempt
17 hearing that relates to three matters that I have directly set
18 forth, and these two what I view as direct violations of my
19 order -- and I'm not sure that they are, but they appear to be
20 direct violations of my order -- aren't noticed for this civil 14:56:41
21 contempt hearing.

22 But I think I've made it very plain, which is why we
23 have specially appearing counsel here, that if I determine at
24 the end of the civil contempt hearing that there is a basis and
25 a need to refer any or all of these matters for criminal 14:56:56

1 contempt, I will do so.

2 It also seems to me that these matters, even though
3 they cannot and should not, in and of themselves, be the
4 subject of civil contempt, are relevant to the civil contempt
5 hearing in terms, as I've said all along, about the need and 14:57:11
6 the necessity and the extent of the remedy required that may be
7 sought by the plaintiff class for materials and other matters
8 that were not provided by the Maricopa County Sheriff's Office
9 prior to the trial in this matter, so here is what I would
10 propose. 14:57:32

11 I'm not going to adjust these civil contempt hearings
12 to incorporate those matters which I believe may have been but
13 I do not know were direct violations of my order, but I'm not
14 going to view them necessarily as irrelevant. I don't know
15 whether the attorney-client privilege may have been waived, 14:57:48
16 based on the content of the interviews; I haven't even seen the
17 content of the interviews. But I'm not going to hold a civil
18 contempt hearing concerning them, even though I'm not going to
19 find them irrelevant to the present civil contempt hearing.
20 Nor do I make a representation that they will not possibly be 14:58:06
21 the subject of a future criminal contempt hearing if I
22 determine at the end of these hearings that civil contempt
23 cannot serve the purposes that are required by the nature of
24 the contempt itself.

25 That is how I propose to proceed. Is there any 14:58:26

1 concern or comment by the parties?

2 MS. IAFRATE: I have nothing to add, Your Honor.

3 THE COURT: Okay. Ms. Wang?

4 MS. WANG: Your Honor, we had intended to inform the
5 Court and defendant today that we were going to file a motion 14:58:49
6 for a new order to show cause why defendant Arpaio should not
7 be held in contempt for what appears to be the deliberate
8 withholding of documents in violation of this Court's orders
9 and after consultation with counsel. It was our intent to file
10 that motion early next week, but Your Honor has now stated a 14:59:11
11 proposal to proceed otherwise.

12 I think we do agree with the Court that there are
13 issues relating to these new facts that we have learned from
14 the Monitor Team initially last Friday that would be related
15 to, and overlapping with, the ongoing civil contempt 14:59:37
16 proceeding. But we do believe that there are new grounds for a
17 civil contempt proceeding, and quite potentially for a criminal
18 contempt proceeding, which, of course, would be in the Court's
19 sole discretion to refer for investigation by the United States
20 Attorney's Office or a special prosecutor. 14:59:54

21 But I offer that, Your Honor, because it had been our
22 intent to inform the Court, because it could have a bearing on
23 the scheduling and the scope of the ongoing proceeding.

24 THE COURT: Well, you know, Ms. Wang, I do not want to
25 preclude you from any remedy that you may choose to seek, and 15:00:12

1 I'll consider that. I just put this forth as a proposal so
2 that we could expedite matters that currently exist.

3 I believe that Mr. Birnbaum and others have repeatedly
4 said that there may be people who are not involved here that
5 shouldn't be drug along in the context of a civil contempt
6 hearing, raising to a possible criminal contempt hearing, any
7 longer than necessary.

15:00:32

8 I also, frankly, as I'm sure you do, have concerns
9 about providing prompt and immediate relief and reparation to
10 the plaintiff class, and so my concerns, and I will say it
11 frankly, have been we need to get this first part over. There
12 isn't any part, if I determine that a criminal referral is
13 necessary --

15:00:48

14 (Beeping sound on telephone.)

15 THE COURT: Are you still there? Chief Martinez?

15:01:00

16 DEPUTY MONITOR MARTINEZ: Yes, sir, I'm here.

17 THE COURT: Okay. Did anybody join the call?

18 There isn't any part of anything that I want --

19 because I haven't yet determined that a criminal contempt

20 citation is necessary, I haven't ordered one; I still haven't

15:01:19

21 considered that it's necessary. But I certainly also have not

22 bound myself, if I determine that a criminal referral is

23 necessary, to limiting it only to the three matters of this

24 civil contempt.

25 And it does seem to me that if any criminal contempt

15:01:37

1 proceeding is desirable, I don't want to piecemeal out that
2 criminal contempt hearing; I want to just do one, as I've
3 indicated before. I do believe it's important, for lots of
4 reasons, and justified that I stay on the civil hearing and the
5 enforcement process that pertains to this injunctive order, but 15:01:52
6 I have every intention of referring out not only to the United
7 States Attorney any criminal contempt that may be necessary,
8 but that would go to a different judge. So I don't have any
9 intention of piecemealing one out to one judge, one out to
10 another judge, because, as you know, these matters are randomly 15:02:11
11 drawn.

12 So all the parties can consider what I've just said as
13 you consider how to appropriate -- if you want to do anything
14 with respect to it, I'm not trying to limit any party with
15 respect to any sought relief, but I'm just proposing how we 15:02:24
16 proceed and setting forth my concerns, my inclinations, and
17 that's how we're going to proceed.

18 Again, to the defendants, to the extent you want to
19 introduce evidence in this matter, because I do think, as it
20 seems to me today, it's relevant, although it's not an item or 15:02:41
21 a matter of civil contempt, it is relevant to the civil
22 contempt hearing, so I'm not going to presume to try to prevent
23 you from introducing evidence that you may want to introduce in
24 this action pertaining to it. But as I proposed that we have
25 regular status conferences, these are matters that I hope we 15:02:58

1 can address and adjust in conjunction with the deadlines and
2 the trial dates that we have.

3 And before I'm through today, I do wish to set status
4 conferences on a fairly regular basis. And let me suggest that
5 one of the things -- I'm going to talk to the monitor here 15:03:19
6 again in a second. I think that their investigations may be
7 coming -- I know that they still have to talk to Chief Olson.
8 I'm not sure if Chief Olson's around. I think they have some
9 other interviews that they want you to arrange, Ms. Iafrate,
10 but I think that those requests are going to be made pretty 15:03:40
11 rapidly. If you respond pretty rapidly, those will be over,
12 and it seems to me that one of the things that might be
13 profitable for the parties to do is, as I've said earlier, see
14 if based on those interviews you can arrive at certain
15 stipulations that obviate the need to spend a lot of time on 15:03:59
16 irrelevant things.

17 MS. IAFRATE: Your Honor, we have gone through one
18 round of interviews related to these new investigations. I
19 just got an e-mail right before I walked in here requesting
20 approximately 20 more interviews. So we are scheduling them as 15:04:16
21 quickly as we possibly can. We've done round 1 and round 2.
22 The Chief Olson interview is separate and apart from these
23 interviews that they provide us with an e-mail and say: Please
24 schedule these interviews.

25 THE COURT: All right. 15:04:36

1 MS. IAFRATE: So we're working through both of those.

2 THE COURT: As far as I'm aware, at least as far as
3 the monitor's indicated to me, you've been cooperative, in the
4 large main, in scheduling the interviews, and I anticipate that
5 you'll continue to be so. And if there's a problem, you can
6 always ask for an emergency hearing, as we had last week, if
7 it's necessary, after we set the status orders.

15:04:48

8 All right. I received suggestions from Maricopa
9 County and from the plaintiffs on suggested revisions to the
10 supplemental permanent injunction. I looked at them both. I
11 don't know if either party wants to address them. I must say I
12 think something more simple along the lines suggested by
13 Mr. Masterson is what I'm going to do, but if plaintiffs want
14 to be heard on their a little bit more expansive suggestion.

15:05:18

15 I do want to make it clear, though, to defendants that
16 even if I accept Mr. Masterson's definition and restriction as
17 being in line with the Ninth Circuit authority, the Ninth
18 Circuit authority did not consider in its appeal any of the
19 supplemental adjustments made to the monitor's authority, and
20 those still all go forward.

15:05:35

15:05:56

21 Ms. Iafrate? Or not Ms. Iafrate, I'm sorry.

22 Ms. Wang, did you want to be heard?

23 MS. WANG: Sure, Your Honor, briefly.

24 Your Honor, the reason we've presented what I think
25 you just characterized as a more expansive language for the two

15:06:10

1 paragraphs in the supplemental injunction is that I think it's
2 become clear, particularly given the more recent events in this
3 case, that we need to get a handle on MCSO's Internal Affairs
4 investigations and the way that complaints are handled and that
5 discipline is meted out to MCSO personnel.

15:06:33

6 And the concern we have, Your Honor, is that simply
7 limiting the language to fourth and fourteenth --

8 THE COURT: Let me make a suggestion to you, Ms. Wang,
9 and see --

10 MS. WANG: Yes, sir.

15:06:46

11 THE COURT: -- what you think about this.

12 MS. WANG: Okay.

13 THE COURT: I feel myself bound by the Ninth Circuit
14 Court of Appeals, for some strange reason, and the Ninth
15 Circuit indicated that I needed to limit the scope of my
16 injunction to matters involving the plaintiff class.

15:06:54

17 It seems to me that Mr. Masterson's and
18 Mr. Popolizio's suggestion does that pretty clearly, but as
19 I've indicated, that does not change the adjustments made to
20 the monitor's authority in light of intervening events.

15:07:09

21 If you believe that intervening events require this
22 Court to again adjust the monitor's authority upward, let me
23 suggest that I would be more inclined to adjusting the
24 monitor's authority upward in light of intervening events
25 rather than curtailing my original injunctive order, which I

15:07:33

1 believe the Ninth Circuit has already indicated I need to
2 narrow slightly.

3 MS. WANG: Understood, Your Honor. And but separate
4 and apart from the intervening events, we believe just on the
5 record through the trial, and in light of the Ninth Circuit's 15:07:46
6 order, the language that Mr. Masterson has proposed doesn't
7 capture the full range of activity. That is limited to the
8 plaintiff class. We think that our proposal captures -- is
9 limited to the plaintiff class as the Ninth Circuit directs,
10 but would also encompass violations of agency policy that could 15:08:05
11 implicate the rights of the plaintiff class that do go to the
12 issues of discriminatory policing, and, Your Honor, I think
13 this point has been discussed before in court, don't leave it
14 in the hands of MCSO to classify a particular matter as falling
15 within the ambit of a Fourth or Fourteenth Amendment violation. 15:08:32
16 Our language is only slightly more expansive, and I would
17 submit discusses policy violations, which are often the focus
18 of the charged violations in Internal Affairs investigations.

19 So, in other words, from what we have seen and from
20 standard law enforcement practices, I think that Internal 15:08:51
21 Affairs investigations often are focused on violations of
22 agency policy, in this case of MCSO's policy and procedures
23 manual, and not necessarily explicitly involving violations of
24 the Constitution.

25 I therefore think that the language that we've 15:09:09

1 proposed, setting aside intervening events and based solely on
2 the trial record and not in light of the Ninth Circuit's
3 opinion, would capture a much more limited category of material
4 than what Your Honor first ordered in October of 2013, but
5 would be limited to the plaintiff class as the Ninth Circuit
6 has ordered. 15:09:27

7 THE COURT: I'll consider that, Ms. Wang, but doesn't
8 some of that go to a possible remedy, if in fact I find that
9 the material that you were deprived and should have received
10 indicates that their Internal Affairs problem has processed -- 15:09:46
11 or their Internal Affairs process has problems, and that their
12 complaints from the public have problems and everything else,
13 and that that material would have -- or the material that was
14 withheld would have provided you with that information so that
15 you could have presented it at trial, don't I have to make that 15:10:04
16 finding first?

17 MS. WANG: Your Honor, I think that as you noted, we
18 could be seeking additional and different relief after the
19 outcome of the ongoing proceeding. I'm just speaking based on
20 the trial record. I think what we have is a Ninth Circuit 15:10:21
21 order, an opinion that said that the original paragraphs 136I
22 and J were not limited to the plaintiff class. We think that
23 our proposed language is limited to the plaintiff class, but is
24 going to capture the disciplinary outcomes and misconduct
25 complaints in the way that they are categorized and classified 15:10:43

1 in a normal MCSO Internal Affairs proceeding.

2 Just to be clear, because I'm not sure I was, I think
3 that the way that Internal Affairs, or now PSB, files are kept,
4 what's normally charged, in terms of misconduct alleged against
5 a deputy, is a violation of agency policy. We haven't seen 15:11:04
6 that many files that explicitly allege that a deputy has
7 violated the Fourth and the Fourteenth Amendments of the
8 Constitution. That's my main point in why I think our language
9 is both necessary, and is limited in the way the Ninth Circuit
10 ordered. 15:11:25

11 THE COURT: All right. I follow you. Thank you.

12 MS. WANG: Thank you.

13 THE COURT: Mr. Popolizio, do you want to be heard on
14 this?

15 Or is it you, Ms. Iafrate? 15:11:30

16 MS. IAFRATE: It's me, Your Honor.

17 THE COURT: Okay.

18 MS. IAFRATE: I don't have anything to add to our
19 proposed language, Your Honor. The way that we proposed it was
20 we went back to the Ninth Circuit's language and incorporated 15:11:37
21 that into our proposal. Therefore, it tracks the Ninth
22 Circuit's mandate.

23 THE COURT: You wouldn't contest Ms. Wang's point,
24 though, that if agency policy has been violated with respect to
25 the members of the plaintiff class, that wouldn't violate the 15:11:52

1 Ninth Circuit's order.

2 MS. IAFRATE: It wouldn't violate the Ninth Circuit
3 order --

4 THE COURT: I mean, the Ninth Circuit's mandate to me
5 back saying you need to limit it to activities involving
6 members of the plaintiff class, so it doesn't have to be just
7 constitutional violations.

15:12:00

8 MS. IAFRATE: Correct, Your Honor, it doesn't have to
9 be just constitutional violations, but the way that plaintiffs
10 have worded their proposal, it expands it much further than
11 what you just posed to me.

15:12:14

12 THE COURT: I agree, but I do agree, I think, with
13 Ms. Wang's supplemental point, which is that it does requi- --
14 I should make sure that the issues are related to members of
15 the plaintiff class. But the members of the plaintiff class
16 are entitled to the benefits of MCSO policy just like every
17 other citizen is entitled to the benefits of MCSO policy, are
18 they not?

15:12:29

19 MS. IAFRATE: Yes.

20 THE COURT: Okay. So you wouldn't have any dispute
21 with Ms. Wang's final point there.

15:12:42

22 MS. IAFRATE: The point that she makes, I would agree
23 the language that she posed does not say the final point that
24 she said.

25 THE COURT: Okay.

15:12:51

1 MS. IAFRATE: I think that it's more expansive.

2 THE COURT: No, I agree that the language she proposed
3 was more expansive than that, and I'll take a look at it and
4 enter an order this week.

5 MS. IAFRATE: Very well. 15:12:59

6 THE COURT: All right. We have responses to
7 Mr. Klayman's motion for admission pro hac vice.

8 Is he here, and does he wish to be heard?

9 All right. He's not here. Now, I'm not -- let me
10 just say that I told him that I would give him a full 15:13:13
11 opportunity to reply if he wished to. And he hasn't replied,
12 and the time hasn't run for his reply so I'm not going to rule
13 on that today. I'll allow him to appear -- file a reply if he
14 wishes to and appear at the next status conference and argue
15 that he should be admitted to pro hac vice status. 15:13:31

16 I am going to note the plaintiffs have opposed his
17 admission for reasons that I raised with him last week, which
18 is he has signed -- he signed all of Mr. Moseley's appli- --
19 well, he didn't sign them, but he was on the block, on the
20 signature block, and on the -- he's in the same law firm. I 15:13:54
21 don't see that there's any different analysis, and it seems to
22 me that the conflict is still the same. I'm concerned about
23 him being a witness.

24 And as I've said before, I'm also concerned that his
25 motion to intervene as it pertains to the ability to claim 15:14:07

1 rights in Mr. Montgomery's property is not well taken because
2 we're not adjudicating Mr. Montgomery's rights to his own
3 property in this proceeding. But those are the matters, if
4 Mr. Klayman gets a copy of the transcript, that I am concerned
5 about, and we will let him address it at that time.

15:14:23

6 I do have one concern that I want to share with
7 Maricopa County, and by that I mean Mr. Walker.

8 Mr. Walker, last week I think you indicated that you
9 really don't have any right to substantively argue anything
10 different than the sheriff, because while you have no power to
11 control the sheriff, and you may or may not agree with him,
12 Maricopa County is bound legally and liability-wise by his
13 actions. And you filed a different -- you filed a substantive
14 opposition to the admission for pro hac vice of Larry Klayman
15 when the sheriff explicitly took no possession one way or the
16 other.

15:14:38

15:15:04

17 I don't know that you have any authority to do that,
18 do you?

19 MR. WALKER: Yes, Your Honor, I think that I do, and
20 it sounds as though I may have left the Court with a
21 misimpression the last time we spoke about this issue.

15:15:14

22 Let me try to be clear. What you and I were
23 discussing at the last status conference had to do with
24 financial responsibility for the costs related to remedial
25 orders coming out of this proceeding. And the point I was

15:15:40

1 trying to make is there's an Arizona statute that requires the
2 board of supervisors to provide funding for reasonable and
3 necessary activities, law enforcement activities, of the
4 sheriff. And that, we interpret as requiring, at least to the
5 extent that we're not talking about willful violations, that 15:16:08
6 the County has a financial obligation under that statute and
7 has been acting --

8 THE COURT: Well, I understand that. Let me get right
9 to the point.

10 MR. WALKER: Okay. 15:16:22

11 THE COURT: What point -- what argument, as I think I
12 read the Ninth Circuit opinion, and I'll go back and reread it
13 before we meet next week, I'm not going to prohibit you from
14 being a party here because you're providing and you're
15 responding to document production requests. You clearly are a 15:16:35
16 party. But as I read the Ninth Circuit order, you're a party
17 because you're going to be liable for any judgment, not because
18 you have any substantively different legal right to protect.

19 Can you identify for me what substantively different
20 legal right the County has to protect in defending itself 15:16:52
21 against liability that is incurred by the sheriff but not by
22 you?

23 MR. WALKER: Certainly, Your Honor. The Board of
24 Supervisors, and the portion of the county government that
25 operates under their direct supervision and direction, has a 15:17:09

1 direct fiscal responsibility to the taxpayers of this county to
2 ensure that the tax revenues are used in appropriate ways. The
3 sheriff has no independent responsibility with respect to that,
4 so in that sense, the interests are very different.

5 As Your Honor I would imagine is well aware, it is not
6 uncommon for the Board of Supervisors and the sheriff to be on
7 opposite sides of litigation, and --

8 THE COURT: But the liability here is not based on
9 anything that the Maricopa County Board of Supervisors has done
10 at all, so I don't know that you have -- I mean, I think you're
11 a party here because you're going to be liable for the
12 judgment, but I don't know that you have any ability to make
13 any liability argument separate from the sheriff.

14 Why don't you consider that, because I don't want to
15 deprive you of that right if you've got it; I just don't know
16 that you have it.

17 MR. WALKER: Could I just speak very briefly to the
18 Klayman motion?

19 THE COURT: To what?

20 MR. WALKER: The Klayman --

21 THE COURT: No. And the reason I'm not going to let
22 you speak to the Klayman motion isn't because I'm not sure that
23 I won't let you be heard on it; it's that Mr. Klayman is not
24 here. We're not going to take up that motion because I told
25 him I would give him a chance to reply, and the time for reply

15:17:38

15:17:58

15:18:15

15:18:25

15:18:37

1 has not yet run so that may be why he's not here.

2 But if I decide that you have a right to be heard on
3 it, I'll let you be heard when we take up the Klayman motion.

4 Okay?

5 MR. WALKER: Okay. Thank you, Your Honor.

15:18:51

6 THE COURT: Thank you, Mr. Walker.

7 The Department of Justice has filed a motion to
8 intervene. The plaintiffs have filed a non-opposition to such
9 a motion. Are the defendants going to oppose the motion?

10 The time hasn't run, so if you're going to oppose the
11 motion, I think you have, like, two or three days left to file
12 an opposition if you're going to. I just want to know if
13 you're going to. If you're not going to, I'm going to grant
14 the motion.

15:19:03

15 MS. IAFRATE: Your Honor, we would like the full time.
16 I think that it's August 6th.

15:19:14

17 THE COURT: Oh, is it? Okay.

18 MS. IAFRATE: That was my calendaring.

19 THE COURT: I didn't count it. I'll accept your
20 representation.

15:19:24

21 MR. WALKER: As would the County, Your Honor.

22 THE COURT: Okay. Why don't we set status
23 conferences, and these may need to be adjusted, but right now
24 why don't we set status conferences for August 14th at
25 9:00 a.m., August 21st at 10:00 a.m., August 28th at 9:30,

15:19:35

1 September 4th at 9:00 a.m.

2 I, unfortunately, already have a matter all Friday the
3 11th, so I would like to set it for September 10th at
4 9:00 a.m., and September 18th, which will just be four days
5 before the hearing resumes, at 10:30.

15:20:00

6 MS. IAFRATE: I do have a conflict with one of those
7 dates, Your Honor. I will be in trial August 21st.

8 THE COURT: Do you have anybody you could send,
9 Ms. Iafrate?

10 MS. IAFRATE: Well, Your Honor, I will see if I can
11 work --

15:20:13

12 THE COURT: How about we do this? Set those dates,
13 everybody put down those dates, and just tell me if you've got
14 a problem, and we'll see if we can make adjustments at the next
15 status conference.

15:20:32

16 MS. IAFRATE: Very well.

17 THE COURT: Does that work?

18 MS. WANG: It does, Your Honor. On the plaintiffs'
19 side, we already know that none of plaintiffs' counsel are
20 available on August 14th. We could be available the Monday of
21 that week.

15:20:38

22 THE COURT: "The Monday" meaning what? You mean the
23 following Monday?

24 MS. WANG: No, the previous Monday, or the following
25 Monday; either one, I think.

15:20:53

1 Oh, wait. Sorry. The previous Monday.

2 THE COURT: So that would be -- I'm terrible.

3 MS. WANG: I'm sorry. Let me --

4 THE COURT: Would that be the 10th?

5 MS. WANG: -- get the calendar in front of me. 15:21:03

6 THE COURT: That would be August 10th?

7 MS. WANG: The 10th. August 10th.

8 THE COURT: All right. I will maybe -- we won't

9 schedule one on the 14th. I will look at setting one on the

10 10th, but I will tell you that normally my Mondays are 15:21:09

11 completely filled with criminal matters, so it's going to be

12 either very early in the morning, very late. And hopefully, it

13 won't be of this extent, because I simply won't have this time.

14 But I think we've resolved a lot of things here today, I hope

15 so. 15:21:26

16 Mr. Birnbaum.

17 MR. BIRNBAUM: Yes. Thank you, Your Honor.

18 Your Honor, I --

19 THE COURT: I need to have you speak in a microphone.

20 MR. BIRNBAUM: Let me pull on one. 15:21:35

21 THE COURT: You can approach the podium.

22 MR. BIRNBAUM: Oh. Thank you.

23 Your Honor, just on --

24 THE COURT: I need to have you speak at a microphone,

25 Mr. Birnbaum. 15:21:40

1 MR. BIRNBAUM: Your Honor, just on the scheduling
2 issue, I'm sorry to take your time, I just want to advise the
3 Court that I teach at the ASU Law School --

4 THE COURT: Um-hum.

5 MR. BIRNBAUM: -- Friday morning from 8:30 to 11:30. 15:21:52
6 Is not a problem. I will have somebody from my office attend
7 the status conferences. But it is likely that unless something
8 specifically is agendized that involves Mr. MacIntyre, it is
9 likely I will not attend any of those conferences personally,
10 with the Court's permission. 15:22:15

11 THE COURT: You have it. Thank you, Mr. Birnbaum.

12 MR. BIRNBAUM: Thank you.

13 THE COURT: Ms. Clark.

14 MS. CLARK: Judge, just briefly, I had reached out to
15 Ms. Wang to ask her if she's aware whether there's going to be 15:22:28
16 an issue for a status conference that is going to involve
17 Mr. Casey, that she let me know ahead of time so I can here.

18 As you know, Mr. Casey's --

19 THE COURT: That seems to me to be perfectly
20 reasonable. Is everybody okay with that? 15:22:47

21 MS. CLARK: So I will not --

22 THE COURT: Everybody has nodded their assent, let me
23 state for the record.

24 Let me just say I don't think the monitor has any
25 intent to -- I may be wrong about this, I may be completely 15:22:55

1 wrong, so maybe I ought to shut up, but I do think that I
2 haven't precluded the parties, if they want to do depositions,
3 from doing depositions. I've only said you need to talk -- get
4 the clearance of the monitor first.

5 I think the monitor's pretty much given to Ms. Iafrate 15:23:09
6 the interviews that he wants to do, so if you want to depose
7 people that aren't on that list, check with him and you can
8 begin depositions, and I know there may be an issue with that
9 with respect to Mr. Casey. Otherwise, I think we ought to not
10 require Ms. Clark to be here every time, and we should do her 15:23:24
11 the courtesy of letting her know in advance if there's going to
12 be an issue that involves Mr. Casey.

13 Any problem with that?

14 MS. WANG: No, Your Honor, not from plaintiffs.

15 MS. IAFRATE: No, Your Honor. 15:23:35

16 MR. WALKER: That's fine, Your Honor.

17 MR. COMO: I have no objection, Your Honor.

18 MS. CLARK: Thank you, Judge. Mr. Casey just asked me
19 to raise two issues regarding his deposition, his potential
20 deposition, and that is just since it's been a while with the 15:23:48
21 motion to stay, that he's hoping that Your Honor is going to be
22 present for his deposition. He doesn't want to have to come
23 back for repeated depositions.

24 It's such a unique case and such a unique deposition
25 of the defendant's former counsel, there will be constant 15:24:08

1 issues of confidentiality, privilege, and perhaps other issues,
2 that would -- he's going to need a ruling on in order to be
3 able to answer questions. And to get this done timely and
4 efficiently for Mr. Casey, as well as the parties and the
5 Court, he's again reiterating that he very much would like you 15:24:24
6 to be present for his deposition.

7 Secondly, he is just concerned that production issues,
8 privilege issues concerning production, obviously all be
9 resolved prior at his deposition.

10 THE COURT: All right. Well, I think we've tried to 15:24:40
11 undertake steps towards that today. Counsel probably will be
12 in touch with you -- counsel will probably be in touch with you
13 trying to coordinate that deposition, and it isn't an ex parte
14 contact for counsel and you to contact my judicial assistant to
15 try and find a date that's going to be convenient for me to be 15:25:05
16 there. I think we've already discussed that if I could be,
17 that would be optimal. But I also have a schedule, Ms. Clark,
18 with all due respect, so we'll have to do what we can do.

19 MS. CLARK: Yes, Judge.

20 THE COURT: But I will try to be there. 15:25:18

21 MS. CLARK: Yes, Judge. Thank you.

22 And finally, the last point is we will be producing
23 the documents as discussed earlier on August 3rd. I will be
24 out of the country and unavailable August 4th through the 14th.
25 So if there are other production issues that come up during 15:25:28

1 that time, I'll have to be handling them when I get back on the
2 17th.

3 THE COURT: Happy vacation.

4 MS. CLARK: Thank you.

5 THE COURT: If there's nothing else, then I am, as I
6 indicated I would, going to take the matter that Ms. Iafrate
7 asked be addressed under seal under seal.

15:25:39

8 Are there other matters to be raised?

9 MS. WANG: One other issue we wanted to flag for Your
10 Honor because it could bear on the scheduling of the actual
11 hearing. We've been in the process of meeting and conferring
12 with the defendants about a process for making whole the
13 victims of the preliminary injunction violations. We don't
14 know yet whether we're going to come to any agreement.

15:25:53

15 It may be necessary for us to put on some testimony on
16 that subject, and Ms. Pedley, my co-counsel from Covington, has
17 been taking the lead for us in that meet and confer process and
18 can alert the Court, if you wish, as to the status of those
19 conversations and what the issues may be.

15:26:08

20 THE COURT: All right. Ms. Hedley, please approach --
21 either grab a microphone or approach the podium, please.

15:26:27

22 MS. PEDLEY: Thank you, Your Honor. As my co-counsel
23 mentioned, we have been meeting and conferring. We would
24 recommend that we use a claims administration firm. We hope to
25 reach consent on that issue, the advantage of that being they

15:26:43

1 can handle many of the issues, including notice and evaluating
2 claims and processing those claims.

3 If we are unable --

4 MR. WALKER: I have to object. We talked about this
5 before this status conference began, and my understanding was 15:27:01
6 that the Court was going to be informed that we have been
7 engaged in meet and confer, and continue to be, without getting
8 into the substance of those discussions.

9 THE COURT: That's fine. Let's not get into the
10 substance, then, Ms. Hedley. 15:27:19

11 MS. PEDLEY: Absolutely, Your Honor. We just wanted
12 to alert the Court that if we are unable to reach an agreement
13 as to the process, we will have to put on testimony as to what
14 that process we would advocate look like.

15 THE COURT: All right. I'm aware of that. That seems 15:27:32
16 to me to be an issue. I think from now on we're going to try
17 to refine issues. If we can stipulate and solve them, we're
18 going to eliminate them. And we will refine this until we have
19 a very, hopefully, efficient and succinct hearing available for
20 everyone. 15:27:46

21 MS. PEDLEY: Thank you, Your Honor.

22 THE COURT: Anything else? Mr. Eisenberg.

23 MR. EISENBERG: Your Honor, to the extent that this
24 next portion is a sealed hearing, I feel very secure it
25 probably doesn't pertain to my client and I would ask that I be 15:28:00

1 permitted to be excused.

2 THE COURT: You may be excused if you wish to be.

3 Anybody else who wishes to be excused may be excused
4 except for plaintiffs and defendants.

5 And, of course, you, Mr. Como, can't be excused. I'm 15:28:11
6 sorry. You're separately representing.

7 Well, I suppose if you asked to be excused, you can be
8 excused.

9 MR. YOUNG: Your Honor, with respect to what
10 Mr. Walker just said, and I was the one that had the 15:28:25
11 conversation prior to the hearing and I apologize if there was
12 a misunderstanding, I think my thought was that we weren't
13 going to discuss the substance of the conversations that we had
14 been having, but we were, certainly, wanting to inform the
15 Court of what we were thinking, at least on our side, the Court 15:28:40
16 should order.

17 So if that was a failure on my part to communicate as
18 to what we intended to say, my apologies to Mr. Walker and
19 Ms. Iafrate.

20 THE COURT: I think Mr. Walker acted promptly in order 15:28:52
21 to defend his client's rights, and if he wants to do anything
22 further about it, he can, and we'll take it up from there, but
23 I understand your correction.

24 All right. The hearing is now under seal. I'm going
25 to ask everybody who is not a party to this lawsuit or not a 15:29:09

1 specially appearing party to be excused.

2 (The courtroom is cleared.)

3 (Sealed proceedings omitted.)

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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 3rd day of August, 2015.

s/Gary Moll

EXHIBIT 14

Emerg Hearing 8-7-15 SEALED.txt

1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA
3
4 Manuel de Jesus Ortega Melendres,)
5 et al.,)
6 Plaintiffs,) No. CV 07-2513-PHX-GMS
7 vs.) Phoenix, Arizona
8 Joseph M. Arpaio, et al.,) August 7, 2015
9 Defendants.) 1:03 p.m.
10)
11)
12)

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS
14 BEFORE THE HONORABLE G. MURRAY SNOW
15 In-Court Hearing
16 (Volume 1, Pages 1-24)
17

18 SEALED PROCEEDINGS
19
20
21

22 Court Reporter: Gary Moll
23 401 W. Washington Street, SPC #38
24 Phoenix, Arizona 85003
(602) 322-7263

25 Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 2

1 A P P E A R A N C E S
2

Emerg Hearing 8-7-15 SEALED.txt

3 For the Plaintiffs:

American Civil Liberties Union Foundation
Immigrants' Rights Project
By: Cecillia D. Wang, Esq. - Telephonically
39 Drumm Street
San Francisco, California 94111

American Civil Liberties Union Foundation
Immigrants' Rights Project
By: Andre Segura, Esq. - Telephonically
125 Broad Street, 18th Floor
New York, New York 10004

American Civil Liberties Foundation of Arizona
By: Joshua David R. Bendor, Esq.
P.O. Box 17148
Phoenix, Arizona 85011

Covington & Burling, LLP
By: Lauren E. Pedley, Esq. - Telephonically
1 Front Street, 35th Floor
San Francisco, California 94111

Covington & Burling, LLP
By: Michelle L. Morin, Esq. - Telephonically
333 Twin Dolphin Drive, Suite 700
Redwood Shores, California 94065

Mexican American Legal Defense and Educational Fund
By: Jorge M. Castillo, Esq. - Telephonically
634 S. Spring Street, 11th Floor
Los Angeles, California 90014

19 For the Defendant Maricopa County:

Walker & Peskind, PLLC
By: Richard K. Walker, Esq.
By: Charles W. Jirauch, Esq.
SGA Corporate Center
16100 N. 7th Street, Suite 140
Phoenix, Arizona 85254

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing

3

A P P E A R A N C E S

3 For the Defendant Joseph M. Arpaio:

Jones, Skelton & Hochuli, PLC
By: John T. Masterson, Esq.
By: Joseph T. Popolizio, Esq.
By: Linda Tivorsak, Esq.
2901 N. Central Avenue, Suite 800
Phoenix, Arizona 85012

7 For the Defendant Joseph M. Arpaio and Maricopa County

Emerg Hearing 8-7-15 SEALED.txt
Sheriff's Office:
8 Iafrate & Associates
By: Michele M. Iafrate, Esq.
9 649 N. 2nd Avenue
Phoenix, Arizona 85003
10
11 For the Movants Christine Stutz and Thomas P. Liddy:
Broening, Oberg, Woods & Wilson, PC
By: Terrence P. Woods, Esq. - Telephonically
12 P.O. Box 20527
Phoenix, Arizona 85036
13
14 For Chief Deputy Gerard Sheridan:
Mitchell Stein Carey, PC
By: Barry D. Mitchell, Esq.
15 1 Renaissance Square
2 North Central Avenue, Suite 1900
16 Phoenix, Arizona 85004
17
18 For Executive Chief Brian Sands:
Lewis, Brisbois, Bisgaard & Smith, LLP
By: Greg S. Como, Esq.
19 2929 N. Central Avenue, Suite 1700
Phoenix, Arizona 85012
20
21 Wilenchik & Bartness, PC
By: John Wilenchik, Esq.
2810 N. 3rd Street, Suite 103
Phoenix, Arizona 85004
22
23 For Lieutenant Joseph Sousa:
David Eisenberg, PLC
By: David Eisenberg, Esq.
24 2702 N. 3rd Street, Suite 4003
Phoenix, Arizona 85004
25

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SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 4

1 A P P E A R A N C E S

2

3 Also present:
4 Chief Robert Warshaw, Monitor - Telephonically
Chief Raul Martinez, Deputy Monitor - Telephonically
5 Chief Deputy Gerard Sheridan
Victoria Lopez, Esq.
6 Captain Steve Bailey
Jennifer Grisham

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Emerg Hearing 8-7-15 SEALED.txt

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SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 5

1 P R O C E E D I N G S

2

3 THE COURT: Please be seated.

4 THE CLERK: This is CV 07-2513, Melendres v. Arpaio,
5 on for status conference.

6 Counsel, please announce your appearances.

7 MR. BENDOR: Good afternoon, Your Honor. Josh Bendor
8 of the ACLU of Arizona representing plaintiff. With me is
9 Victoria Lopez, who's an attorney with, and the legal director
10 of, the ACLU of Arizona, but has not entered a notice of
11 appearance in this case. I also have co-counsel on the phone.

12 THE COURT: Any objection to Ms. Lopez appearing?

13 MS. IAFRATE: No, Your Honor.

14 THE COURT: Or being present? All right.

15 MS. IAFRATE: Good afternoon, Your Honor. Michele
16 Iafrate on behalf of Sheriff Arpaio and the non-party alleged

Emerg Hearing 8-7-15 SEALED.txt

17 contemnors.

18 MR. MASTERSON: Good afternoon, Judge. John Masterson
19 and Joe Popolizio for Sheriff Arpaio.

20 THE COURT: Good afternoon.

21 MR. WALKER: Good afternoon, Your Honor. Richard
22 walker and Charles Jirauch, also with us is one of our
23 paralegals, Jennifer Grisham, on behalf of the Maricopa County
24 as embodied in the Board of Supervisors, the county manager --

25 THE COURT: Who's Ms. Grisham, so I know for sure?

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 6

1 MR. WALKER: This lady sitting here in this blue.

2 THE COURT: Thank you.

3 MR. WALKER: On behalf of the portion of Maricopa
4 County Government embodied in the board of supervisors, the
5 county manager, and the employees working under their direction
6 and supervision.

7 MR. COMO: Good afternoon, Your Honor. Greg Como
8 appearing on behalf of Brian Sands.

9 MR. MITCHELL: Good afternoon, Judge. Barry Mitchell,
10 specially appearing on behalf of Chief Gerard Sheridan.

11 MS. TIVORSAK: Linda Tivorsak, standing in for Mel
12 McDonald, specially appearing for Sheriff Joe Arpaio.

13 MR. EISENBERG: Good afternoon, Your Honor. David
14 Eisenberg, specially appearing on behalf of Lieutenant Joseph
15 Sousa. I would waive his appearance for this hearing.

16 THE COURT: Thank you.

17 MR. WILENCHIK: Your Honor, John Wilenchik, specially
18 appearing for Brian Sands.

19 MS. IAFRATE: Your Honor, I would also note that I
20 have Captain Steve Bailey in the courtroom with me, potentially

Emerg Hearing 8-7-15 SEALED.txt
21 to answer any questions that you have regarding some of the
22 issues that were noticed for today's hearing.

23 THE COURT: Thank you. I recognize, of course, the
24 federal marshals in the back of the room. Is everybody
25 satisfied that everybody who's in the room is appropriate to be
SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 7

1 here? Nobody concerned about anybody?

2 Let me take up a few matters and see --

3 MR. WOODS: Your Honor, there are a bunch of us
4 appearing by phone.

5 THE COURT: Ah, thank you. Please, enter your
6 appearances.

7 MS. WANG: Good afternoon, Your Honor. Cecillia Wang
8 of the ACLU for the plaintiffs. My co-counsel, Jorge Castillo
9 of MALDEF, has asked me to announce his appearance as well, as
10 he's calling in from a cell phone in a noisy place.

11 THE COURT: All right.

12 CHIEF WARSHAW: And good afternoon, Your Honor. This
13 is Chief Warshaw, and with me is Chief Martinez.

14 THE COURT: Good afternoon.

15 MR. WOODS: Terry Woods on behalf of nonparties Stutz
16 and Liddy.

17 MR. SEGURA: Andre Segura of the ACLU for the
18 plaintiff.

19 MS. PEDLEY: Lauren Pedley of Covington & Burling on
20 behalf of the plaintiff.

21 MS. MORIN: Your Honor, this is Michelle Morin of
22 Covington & Burling, also on the plaintiffs' team. My
23 pro hac vice appearance is on its way to the Court, or
24 application is on its way to the Court.

25 THE COURT: Any objection to her appearance on the
Page 6

Emerg Hearing 8-7-15 SEALED.txt

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 8

1 telephone?

2 MS. IAFRATE: I'm sorry, Your Honor, I missed where
3 she was from.

4 THE COURT: Covington & Burling.

5 MS. IAFRATE: No objection.

6 MR. WALKER: No objection on behalf of the County,
7 Your Honor.

8 MR. COMO: No objection, Your Honor.

9 THE COURT: Ms. Iaftrate, in the order I asked you to
10 have the representative from the Attorney General's Office
11 here. Is he here?

12 MS. IAFRATE: Your Honor, I do not see him here. He
13 was contacted this morning, and I was told that he would either
14 appear telephonically or in person.

15 THE COURT: Can you identify him or her for me,
16 please.

17 MS. IAFRATE: Paul Ahler, A-h-l-e-r.

18 THE COURT: All right. And did he tell you he would
19 be here?

20 MS. IAFRATE: I had a representative discuss the
21 order, bring a physical order over to him and discuss it, and I
22 was told that he would either be here or be available
23 telephonically.

24 THE COURT: I would like to discuss something with
25 Mr. Ahler. Do you want to check and see if he's outside or --

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 9

1 MS. IAFRATE: Sure.

2 THE COURT: -- one of his representatives is outside?

Emerg Hearing 8-7-15 SEALED.txt

3 MS. IAFRATE: Sure.

4 (Pause in proceedings.)

5 MS. IAFRATE: Your Honor, he is not out there. May I
6 make a phone call?

7 THE COURT: I'm not sure that we need to go to that
8 trouble; we may at the end of the hearing.

9 Maybe you can answer my question. Do you know when
10 Mr. Ahler became involved in the investigation that's the topic
11 of the sealed proceedings?

12 MS. IAFRATE: I do not. May I have a moment?

13 THE COURT: Sure.

14 (Pause in proceedings.)

15 MS. IAFRATE: Your Honor, it's my understanding that
16 Mr. Ahler was initially contacted via telephone about six weeks
17 ago just for a small briefing, and then it was a formal
18 briefing about three weeks ago.

19 THE COURT: I guess I'm not sure whether or not we
20 need to have him here, but I think I can address this with you
21 directly and we may not need to have him here.

22 One of the things I noticed was whether or not we need
23 to continue to hold these matters under seal, and the reason I
24 ask that is I've been provided with a newspaper article in
25 which representatives of the Maricopa County Sheriff's Office

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 10

1 made it public that who I understand to be the subject of the
2 investigation we're talking about is subject -- being subjected
3 to a criminal investigation.

4 And since the MCSO has made that information public,
5 and since that was the basis on which you wished to have these
6 hearings held under seal, since I believe that the monitor, in
7 preparing for this hearing, indicated to me that he thinks that

Emerg Hearing 8-7-15 SEALED.txt

8 that subject has been placed on administrative leave by the
9 MCSO sometime this week, I'm not sure if there's really any
10 reason to continue having these proceedings under seal, so I
11 raise that initially.

12 Do you have a response to that?

13 MS. IAFRATE: I do, Your Honor. I would ask the Court
14 to keep these proceedings under seal. I, too, read the
15 newspaper article and was surprised at some of the things that
16 were revealed in that newspaper article.

17 I do not think that the subject fully understands the
18 extent of the investigation or, quite frankly, what the
19 investigation is fully about, and I would ask the Court to keep
20 these under seal because we do not want to compromise the
21 criminal investigation that is continuing.

22 THE COURT: well, I guess I want to assist you in
23 that, Ms. Iafrate, but I don't know how the subject's going to
24 find out any more than what was in the newspaper, because, as I
25 indicated last week, the information turned over to the monitor

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 11

1 and the parties must remain with the monitor and the parties.

2 And so the only thing that he will know by these
3 hearings is that there is a criminal investigation, and he
4 already knows that. So help me understand what's going to be
5 served by proceeding under seal when the public does have a
6 right to know.

7 MS. IAFRATE: well, Your Honor, I would ask that it
8 not be permanently under seal; just until the investigation is
9 completed. what we're trying to do is not compromise an
10 ongoing criminal investigation that is being handled by MCSO
11 and the AG's office. what the target knows and doesn't know, I

Emerg Hearing 8-7-15 SEALED.txt
12 have no information regarding that.

13 THE COURT: I understand that. But I don't have any
14 information regarding it, either, but the subject isn't going
15 to find it out by these proceedings unless you reveal it in
16 court, and it hasn't been revealed yet.

17 So I'm certainly not going to keep this under seal
18 until the investigation is complete, and I guess I'm asking you
19 to tell me why I should keep it under seal even this afternoon,
20 given the public in- --

21 well, let me ask you, the newspaper article quotes
22 Ms. Allen, who is the public -- I don't know. I don't know
23 exactly what her title is, but she handles the public relations
24 for the MCSO -- as confirming that Mr. Mackiewicz is under
25 criminal investigation.

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 12

1 Is that accurate? Did Ms. Allen give that information
2 to the press?

3 MS. IAFRATE: I do not know that, Your Honor.

4 THE COURT: Do you know whether Detective Mackiewicz
5 has been placed on administrative leave by the MCSO?

6 MS. IAFRATE: Yes, Your Honor.

7 THE COURT: He has been?

8 MS. IAFRATE: He has.

9 THE COURT: And has he been informed, as a part of
10 that process, that he is under criminal investigation?

11 MS. IAFRATE: May I have a moment?

12 THE COURT: Sure.

13 (Pause in proceedings.)

14 MS. IAFRATE: Your Honor, my understanding is that the
15 target was placed on administrative leave for administrative
16 IAs, not being briefed regarding the criminal IA.

Emerg Hearing 8-7-15 SEALED.txt

17 THE COURT: Now, I understand that administrative IAS
18 can be criminal IAS as well, but he wasn't given that
19 specification?

20 MS. IAFRATE: He was not given the information that's
21 the subject of the criminal investigation; it was specifically
22 regarding separate instances regarding administrative IAS.

23 THE COURT: Who's speaking on behalf of plaintiff?
24 Is it you, Mr. Bendor?

25 MR. BENDOR: I believe it's going to be Ms. Wang on
SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 13

1 these issues, Your Honor.

2 THE COURT: Ms. Wang, do you wish to --

3 MS. WANG: Yes, Your Honor.

4 THE COURT: Do you wish to be heard on this?

5 MS. WANG: Sure. I don't believe that the defendants
6 have met the standard for continuing to seal the proceedings.
7 I think it's become very clear that, based on information that
8 we've received -- for example, in the course of the monitor's
9 interviews -- that Mr. Mackiewicz is aware of the issues.

10 And, you know, plaintiffs are very much aware of our
11 obligations to keep material confidential that has been ordered
12 to be kept confidential, and we certainly don't have any
13 interest in compromising an ongoing criminal investigation or
14 proceeding. But I don't think that the defendants have borne
15 their burden to show why this proceeding should be sealed, and
16 I think that should be taken on a proceeding-by-proceeding
17 basis.

18 THE COURT: You know, Ms. Iafate, even if Ms. Allen
19 didn't give the quote to the newspaper, it certainly was
20 published. And certainly Mr. Mackiewicz has been informed,

Emerg Hearing 8-7-15 SEALED.txt

21 even whether or not it's accurate, that he's being criminally
22 investigated by the MCSO. So I don't see how keeping this
23 under seal promotes any purpose whatsoever.

24 Can you tell me how it does?

25 MS. IAFRATE: Your Honor, some of your assumptions I'm
SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 14

1 not certain are accurate. I do not believe that the target was
2 told that he was under criminal investigation.

3 THE COURT: No, I think maybe you've misunderstood my
4 question. If it has been publicly disseminated, as it has
5 been, that Mr. Mackiewicz is being criminally investigated by
6 the MCSO, what difference does it make, what benefit does the
7 MCSO have, by keeping these proceedings under seal?

8 MS. IAFRATE: Well, Your Honor, the dissemination that
9 you're talking about is the New Times article?

10 THE COURT: That's the only one I know of.

11 MS. IAFRATE: That's the only one I know of, too. So
12 we're relying on the dissemination of a New Times article
13 regarding a quote that I don't know is accurate or not accurate
14 as a basis for is this --

15 THE COURT: As well as Detective Mackiewicz being told
16 that he's on administrative leave.

17 MS. IAFRATE: Correct, which is different than
18 criminal investigation.

19 THE COURT: Well, I guess --

20 MS. IAFRATE: He was well aware of the administrative
21 investigations for quite some time. This criminal
22 investigation was a new event that he has not been told about.

23 THE COURT: Well, he was aware of administrative
24 investigations for how long?

25 MS. IAFRATE: May I have a minute?

Emerg Hearing 8-7-15 SEALED.txt

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 15

1 THE COURT: Yes.

2 (Pause in proceedings.)

3 MS. WANG: Your Honor, Cecillia wang speaking, if I
4 may interject. I haven't heard from the defendants how keeping
5 this proceeding not under seal would compromise the ongoing
6 criminal proceeding, and I guess plaintiffs would be interested
7 in hearing that.

8 THE COURT: I will certainly ask it, Ms. Wang.

9 MS. WANG: Thank you, Your Honor.

10 (Pause in proceedings.)

11 MS. IAFRATE: Your Honor, I'm sorry, but I didn't hear
12 what Ms. Wang said, so I guess we can get to that after I
13 answer your question?

14 THE COURT: Fair enough.

15 MS. IAFRATE: My understanding is that there have been
16 multiple investigations, and Detective Mackiewicz became aware
17 of the administrative investigations through IA approximately a
18 month ago, but we have information that indicates that he was
19 probably made well aware of them by other sources before IA
20 officially notified him.

21 THE COURT: All right. What Ms. Wang wanted to know
22 is what in this hearing is going to tip him off, or what in
23 this hearing is going to justify keeping this matter under
24 seal?

25 MS. IAFRATE: Well, Your Honor, I assume that after
SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 16

1 this conversation, we're going to get into the documents that
2 were the subject of your order. What I don't want is for there

Emerg Hearing 8-7-15 SEALED.txt

3 to be any sort of tie-in between now we have said his name, and
4 previously we had not mentioned his name in the previous sealed
5 hearing. The documents that have been released involve the
6 criminal investigation, and you ordered that they go to the
7 monitor. I would not want the link of the ongoing criminal
8 investigation to be available to the public until the
9 investigation is not compromised by that release.

10 THE COURT: well, I've indicated that no party is to
11 release the information to anybody without further order of
12 this Court.

13 Here's what I propose we do. I have received your
14 notice indicating that you have complied with all the
15 document -- with all my orders. But frankly, the monitor, and
16 he indicated to me prior to the hearing, just as we were
17 getting ready to go, and I want to tell you what was indicated
18 to me so that you can address it, he indicated to me that in
19 the middle of Chief Sheridan's interview this week
20 Chief Sheridan refused to answer questions because it was the
21 subject of an ongoing criminal investigation. That
22 Mr. Popolizio and Mr. Stein, the one he raised that the order
23 last Friday required him to discuss this information,
24 Mr. Popolizio and Mr. Stein were unaware of any order; that
25 they requested the monitor to provide such an order; that after

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 17

1 several minutes of confusion, Mr. Popolizio pulled the order up
2 on the computer and then confirmed that there was an order,
3 after which Chief Sheridan responded to the questions.

4 Now, I don't know whether you were there or not, but
5 my --

6 MS. IAFRATE: I was not.

7 THE COURT: -- my confusion is this. If in fact
Page 14

Emerg Hearing 8-7-15 SEALED.txt

8 that's accurate, Chief Sheridan was here last week,
9 Mr. Popolizio was here last week, and Mr. Stein was here last
10 week. What about my order was unclear?

11 Mr. Popolizio, do you want to answer that?

12 MR. POPOLIZIO: Yes, Your Honor. I did not pull it up
13 on the computer, but it was pulled up on the computer and that
14 portion of your order was looked at.

15 I don't remember what hour it was during the chief
16 deputy's interview that that subject actually came up, because
17 the interview lasted approximately eight hours.

18 THE COURT: Um-hum.

19 MR. POPOLIZIO: Somewhere well into that interview.

20 I believe that the monitor, Chief Anders, referenced
21 an order, "Are you familiar with an order?" and we asked, "Can
22 we see the order?" that he's referring to? It wasn't, you
23 know, Do you realize, or that there's an order saying that you
24 can speak about this or not? We asked to see it, I believe, if
25 my recollection is correct, that he would not. That's why

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 18

1 Mr. Stein tried to bring it up on his phone and other people
2 did that. We took a recess, we came in, and then we discussed
3 that it could be spoken about.

4 THE COURT: Well, you were here, right?

5 MR. POPOLIZIO: Yes.

6 THE COURT: Was there anything about my order last
7 week that wasn't clear?

8 MR. POPOLIZIO: No, Your Honor. I would say -- I
9 would not say that at all. But going through hours and hours
10 of interviews and having it posed that way, it's, "well, which
11 order are you talking about?" and then we went from there. By

Emerg Hearing 8-7-15 SEALED.txt

12 no means after that was anything kept from Chief Anders, and
13 the delay was so slight, it was minutes.

14 THE COURT: I think that that's -- that is as
15 Chief Anders had indicated it to me. And I wasn't trying to
16 suggest that you withheld anything; I'm just trying to make
17 sure my order is clear enough that everybody understands it,
18 and that you did understand it.

19 And so, Ms. Iafrate, as long as we're under seal, why
20 don't you tell me what you have provided in response to my
21 order.

22 MS. IAFRATE: Your Honor, in response to your order we
23 have provided the entire criminal investigation of Detective
24 Mackiewicz, absent one interview that just occurred out of
25 state.

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 19

1 THE COURT: Okay. And so you'll keep the monitor
2 posted on those --

3 MS. IAFRATE: Yes.

4 THE COURT: -- interviews as they go?

5 MS. IAFRATE: Yes.

6 THE COURT: And then there was also a matter of
7 attorney -- possible notes in which you were going to claim
8 attorney-client privilege?

9 MS. IAFRATE: Those have been released as well.

10 THE COURT: Has a privilege log been provided as well?

11 MS. IAFRATE: Yes.

12 THE COURT: Were they redacted, or --

13 MS. IAFRATE: They were redacted.

14 THE COURT: Okay. Anything else provided?

15 MS. IAFRATE: Oh, yes, Your Honor, hundreds of
16 thousands of documents this week. But as we --

Emerg Hearing 8-7-15 SEALED.txt

17 THE COURT: I'm talking about in response to my order.

18 MS. IAFRATE: No. No, Your Honor.

19 THE COURT: What hundreds of thousands of documents
20 were provided this week?

21 MS. IAFRATE: There are over 80 ITRs that we continue
22 to respond to. Those are the requests from the monitors.
23 There's CAD raw data that's been disclosed. There's over a
24 hundred CDs regarding press coverage.

25 THE COURT: So they're responses to the monitor's
SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 20

1 earlier ITRs.

2 MS. IAFRATE: They're responses to the monitors. You
3 also have an order in which you set forth, I think, eight items
4 that we agreed to regarding the plaintiffs' counsel. Some of
5 those have been responded; some, the due dates are not yet
6 here.

7 We have provided the remaining IAs that were
8 responsive to the monitor's request. We responded to the
9 weekly requests and the monthly requests. We responded to the
10 joint site visit requests.

11 THE COURT: That's all good, but that's in response to
12 previous requests; that's not in response to my order from last
13 week.

14 MS. IAFRATE: Correct.

15 THE COURT: Okay. I would propose, then, that we now
16 take the hearing out from under seal, because I want to discuss
17 the Tuesday hearing date, and I want to discuss what we're
18 going to do at the Tuesday hearing date unless you need to have
19 it reschedule, because you indicated to me when we discussed
20 this that you might need to have it rescheduled, so I just

Emerg Hearing 8-7-15 SEALED.txt

21 wanted to make sure what the status was with that, and just a
22 few other matters, but I don't think any of them -- I might
23 represent what I think you've already done in a public filing
24 that you have complied completely with my order of last week.
25 You've done that in a public filing, haven't you?

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SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 21

1 MS. IAFRATE: Yes, but I was very careful in the way
2 that I worded it, Your Honor.

3 THE COURT: I'll be very careful, too, but before we
4 take this matter out from under seal, I guess I'm going to say,
5 out of an excess of caution, and I haven't heard any reason
6 that justifies not opening this first half of this hearing
7 under seal and last week's hearing that's under seal, that
8 would in any way affect your criminal investigation, in light
9 of the fact that I'm ordering the monitor and the parties to
10 keep it confidential absent further order of the Court.

11 But I will give you until Tuesday to verify with
12 Ms. Allen whether or not she gave that interview to the press,
13 and/or provide any reason why you think you need to have this
14 matter under seal in terms of the ongoing criminal
15 investigation.

16 Do you understand what I'm looking for on Tuesday?

17 MS. IAFRATE: I do understand.

18 THE COURT: All right. With that, I will leave this
19 part of this hearing under seal. Anybody who is here or on the
20 line who is either a party to the contempt proceeding, or a
21 specially appearing non-party, can have a copy of the
22 transcript either of this part of the hearing this week before
23 we go out from under seal, or last week, without further order
24 of the Court. But any such party, or specially appearing
25 non-party, is under the obligation to keep everything in that

Emerg Hearing 8-7-15 SEALED.txt

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 22

1 hearing confidential and -- absent further order of the Court.

2 Is everybody clear on that?

3 MS. IAFRATE: Yes, Your Honor.

4 MR. MASTERSON: Yes, Your Honor.

5 MR. COMO: Yes, Your Honor.

6 MR. WALKER: Yes, Your Honor.

7 THE COURT: All right. Then I don't know if there's
8 anybody out there who wants to come in, but --

9 MS. IAFRATE: There are.

10 THE COURT: -- we're going to now open up the hearing.

11 MR. POPOLIZIO: Your Honor, before we do that, before
12 people start piling in, there's a 1:30 interview scheduled for
13 Detective Mackiewicz by the monitors.

14 THE COURT: Do you need to go?

15 MR. POPOLIZIO: If, well, we could delay it a little
16 bit, because we've talked about it. We were in Chief Deputy
17 Sheridan's interview when the order came out, I believe, I'm
18 not sure, then we saw it, and --

19 THE COURT: Well --

20 MR. POPOLIZIO: -- so they are waiting, but there's a
21 lot of us --

22 THE COURT: Well, why don't you go ahead. I will tell
23 you it's just going to be a few minutes. Mr. Masterson can
24 represent your interests here.

25 MR. POPOLIZIO: Well, it's not only that, it's

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 23

1 other -- other attorneys will be attending that also. So I
2 just wanted you to know that --

Emerg Hearing 8-7-15 SEALED.txt
THE COURT: That's fine. We won't be long.

MR. POPOLIZIO: Okay.

(Sealed proceedings concluded at 1:28 p.m.)

(Volume 2 of this transcript is filed under separate
cover.)

SEALED, CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 24

C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly
Page 20

Emerg Hearing 8-7-15 SEALED.txt

8 appointed and qualified to act as Official Court Reporter for
9 the United States District Court for the District of Arizona.

10 I FURTHER CERTIFY that the foregoing pages constitute
11 a full, true, and accurate transcript of all of that portion of
12 the proceedings contained herein, had in the above-entitled
13 cause on the date specified therein, and that said transcript
14 was prepared under my direction and control.

15

16

17 DATED at Phoenix, Arizona, this 10th day of August,
18 2015.

19

20

s/Gary Moll

21

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Emerg Hearing 8-7-15.txt

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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA
3
4 Manuel de Jesus Ortega Melendres,)
5 et al.,)
6 Plaintiffs,) No. CV 07-2513-PHX-GMS
7 vs.) Phoenix, Arizona
8 Joseph M. Arpaio, et al.,) August 7, 2015
9 Defendants.) 1:28 p.m.

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE G. MURRAY SNOW
16 In-Court Hearing
17 (Volume 2, Pages 25-39)
18
19
20
21

22 Court Reporter: Gary Moll
23 401 W. Washington Street, SPC #38
24 Phoenix, Arizona 85003
(602) 322-7263
25 Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription
CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 26

1 A P P E A R A N C E S
2

Emerg Hearing 8-7-15.txt

3 For the Plaintiffs:

American Civil Liberties Union Foundation
Immigrants' Rights Project
By: Cecillia D. Wang, Esq. - Telephonically
39 Drumm Street
San Francisco, California 94111

American Civil Liberties Union Foundation
Immigrants' Rights Project
By: Andre Segura, Esq. - Telephonically
125 Broad Street, 18th Floor
New York, New York 10004

American Civil Liberties Foundation of Arizona
By: Joshua David R. Bendor, Esq.
P.O. Box 17148
Phoenix, Arizona 85011

Covington & Burling, LLP
By: Lauren E. Pedley, Esq. - Telephonically
1 Front Street, 35th Floor
San Francisco, California 94111

Covington & Burling, LLP
By: Michelle L. Morin, Esq. - Telephonically
333 Twin Dolphin Drive, Suite 700
Redwood Shores, California 94065

Mexican American Legal Defense and Educational Fund
By: Jorge M. Castillo, Esq. - Telephonically
634 S. Spring Street, 11th Floor
Los Angeles, California 90014

For the Defendant Maricopa County:

walker & Peskind, PLLC
By: Richard K. Walker, Esq.
By: Charles W. Jirauch, Esq.
SGA Corporate Center
16100 N. 7th Street, Suite 140
Phoenix, Arizona 85254

cv07-2513, Melendres v. Arpaio, 8/7/15 Hearing

27

A P P E A R A N C E S

3 For the Defendant Joseph M. Arpaio:

Jones, Skelton & Hochuli, PLC
By: John T. Masterson, Esq.
By: Joseph T. Popolizio, Esq.
By: Linda Tivorsak, Esq.
2901 N. Central Avenue, Suite 800
Phoenix, Arizona 85012

7 For the Defendant Joseph M. Arpaio and Maricopa County

Emerg Hearing 8-7-15.txt

Sheriff's Office:

8 Iafrate & Associates
By: Michele M. Iafrate, Esq.
9 649 N. 2nd Avenue
Phoenix, Arizona 85003

10 For the Movants Christine Stutz and Thomas P. Liddy:
11 Broening, Oberg, Woods & Wilson, PC
By: Terrence P. Woods, Esq. - Telephonically
12 P.O. Box 20527
Phoenix, Arizona 85036

13 For Chief Deputy Gerard Sheridan:
14 Mitchell Stein Carey, PC
By: Barry D. Mitchell, Esq.
15 1 Renaissance Square
2 North Central Avenue, Suite 1900
16 Phoenix, Arizona 85004

17 For Executive Chief Brian Sands:
Lewis, Brisbois, Bisgaard & Smith, LLP
18 By: Greg S. Como, Esq.
2929 N. Central Avenue, Suite 1700
19 Phoenix, Arizona 85012

20 Wilenchik & Bartness, PC
By: John Wilenchik, Esq.
21 2810 N. 3rd Street, Suite 103
Phoenix, Arizona 85004

22 For Lieutenant Joseph Sousa:
23 David Eisenberg, PLC
By: David Eisenberg, Esq.
24 2702 N. 3rd Street, Suite 4003
Phoenix, Arizona 85004

25

♀

CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing

28

1 A P P E A R A N C E S

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3 Also present:

4 Chief Robert Warshaw, Monitor - Telephonically
Chief Raul Martinez, Deputy Monitor - Telephonically
Chief Deputy Gerard Sheridan
5 Victoria Lopez, Esq.
Captain Steve Bailey
6 Jennifer Grisham

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Emerg Hearing 8-7-15.txt

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CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing

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1 P R O C E E D I N G S

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3 (Volume 1 of this transcript is sealed and filed
4 under separate cover.)

5 THE COURT: All right. We have a status hearing that
6 has been set for next Tuesday. If I remember correctly,
7 Ms. Iafrate, you indicated that you might have to request that
8 that hearing be moved.

9 Are you available for that hearing?

10 MS. IAFRATE: I am, Your Honor. The more concerning
11 one was the latter one that you wanted me to find a substitute
12 for, but for Tuesday I'm good to go.

13 THE COURT: All right. Does anybody else have any
14 problem with the Tuesday status hearing?

15 MR. WALKER: I don't, Your Honor.

16 MR. COMO: Your Honor, Dane Dodd of our office, who
Page 4

Emerg Hearing 8-7-15.txt

17 has appeared in this case, will be attending for me.

18 THE COURT: All right. Let me just say that I would
19 propose the following topics at least for this Tuesday status
20 hearing, and then if anybody else has any they wish to raise
21 they can raise them.

22 It appears that no party has any opposition to the
23 intervention of the federal government in this matter. I do
24 take it -- I haven't read it very completely, but I take it
25 that the sheriff would -- has no opposition to the extent that

CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 30

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1 the federal government doesn't try to expand the scope of this
2 hearing. And I'll take that into consideration and probably
3 rule on it Tuesday.

4 We still have a pending renewal of pro hac vice
5 application for Mr. Klayman. I indicated I would give him time
6 to file a reply in this matter. I have not yet received a
7 reply. I think he's out of time to file a reply. But if he
8 wishes to be heard on his pending renewal of the pro hac vice
9 application or his -- I don't know whether he wishes to
10 characterize it as his separate application, we will take that
11 up on Tuesday.

12 I think we need to take up what we're going to do with
13 the 1500 driver's licenses that are in the marshals' custody.
14 I understand that there is some confusion about whether or not
15 there is an ongoing Internal Affairs investigation with respect
16 to those, and I will seek the monitor's clarification about
17 what has been indicated to him. But it does seem to me that
18 the plaintiffs should be heard on whether or not they wish
19 access to those, especially to the extent that they have been
20 represented to contain within them large numbers of members of

Emerg Hearing 8-7-15.txt
21 the plaintiff class.

22 We also probably need to address what we're going to
23 do with the 50 hard drives in the monitor's custody and how we
24 wish to proceed as to those. I am informed that the United
25 States Government is going to be here on Monday and begin the
CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 31

1 copying process, and we may have an update from the monitor as
2 to what they plan to do or intend to do with respect those, and
3 then we can take appropriate action as well.

4 I will note that just before this hearing the
5 defendant has filed a notice that is a public notice indicating
6 that the defendant is now in complete compliance with the order
7 that I entered last week under seal. We will take up the
8 monitor's evaluation as to whether or not he has any concerns
9 that any information is still outstanding on that Tuesday
10 hearing. I do note that I believe he indicated that interviews
11 this week may have indicated some material that should be
12 present in the file, and that will give him a chance to assess
13 whether it's there.

14 Chief Sands has filed a request to be excused from
15 status conferences in the future. I suppose we can take that
16 up as well if anybody has any objections. Those are the
17 matters that I would propose we take up on Tuesday.

18 Does anybody else have any matters that they wish to
19 raise? Mr. Masterson?

20 You need to find, remember, a microphone, so I can
21 hear you.

22 MR. MASTERSON: Thank you very much, Judge.

23 I do have a question concerning -- well, some
24 questions concerning the interviews that have been taking
25 place.

Emerg Hearing 8-7-15.txt

CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing

32

1 THE COURT: Right.

2 MR. MASTERSON: And I'm a little concerned about the
3 purpose of the interviews. My assumption is that the Court
4 intends to use the results or information determined during
5 interviews with respect to issues of civil contempt and/or
6 possibly a criminal referral.

7 My concern, then, is that at the beginning of each
8 interview, counsel is told that counsel may not participate.
9 And if the Court is going to use this information, basically,
10 in any way against the parties, I'm concerned that the parties
11 need effective representation of counsel at the interviews.

12 THE COURT: Well, I have not -- I think I've made it
13 clear on the record, Mr. Masterson, that you're there and you
14 can assert any privileges that you have, both you and specially
15 hearing counsel, if they need to invoke privileges that are
16 applicable to the scope of their representation.

17 Does that take care of your response?

18 I mean, it doesn't --

19 MR. MASTERSON: Somewhat.

20 THE COURT: -- mean that you can ask questions,
21 because I haven't precluded you from doing depositions at all.

22 MR. MASTERSON: Well, I believe, though, effective
23 representation would include questions, if deemed appropriate
24 by counsel of the person being interviewed.

25 THE COURT: Well, you can do that in a deposition.

CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing

33

1 MR. MASTERSON: And we can do it at the interview.

2 If the Court intends to use the interviews in any

Emerg Hearing 8-7-15.txt

3 affirmative way against the parties, I think, then, the parties
4 should be allowed to ask questions, if deemed appropriate, at
5 the interviews, and raise appropriate objections at the
6 interviews.

7 THE COURT: So do you want to raise that Tuesday? Is
8 that something you'd like to raise Tuesday?

9 MR. MASTERSON: I would, Judge.

10 THE COURT: All right. We'll discuss it on Tuesday.
11 If you want to file anything before then, you can do that.

12 I do believe the interviews are mostly done. The
13 interviews, as I indicated last week, hopefully will help
14 streamline the process, eliminate -- identify issues that are
15 relevant, eliminate issues that are not relevant, and go
16 forward from there.

17 MR. MASTERSON: And let me just raise one more thing,
18 and it came to mind -- well, actually, it came to mind before I
19 got down here but it was recharged in my mind when you were
20 speaking with Mr. Popolizio. I think the problem with respect
21 to the Court's order yesterday was not that the order was not
22 understood but that the monitor, as has occurred many times
23 during the interviews, referred to documents without providing
24 copies to counsel or the parties. And therefore, counsel and
25 the parties are unable to determine what the document is.

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CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 34

1 Items have not been referenced according to Bates numbers. And
2 whether the document is being read properly, taken out of
3 context, misread, misinterpreted, we don't know, because we
4 don't have copies of the documents.

5 So what I'm trying to do is get a fair -- some ground
6 rules, and so everybody is operating under the same rules, and
7 everybody has a fair chance to protect their rights, and for

Emerg Hearing 8-7-15.txt

8 the monitors to seek information they need at these interviews.

9 THE COURT: I'll talk to the monitors about providing
10 copies of the documents they're going to use. I do understand
11 that documents do come up during the interviews that we did not
12 know existed before, it's hard for the monitors to provide
13 copies of those, but I'll talk to them about that.

14 MR. MASTERSON: Thank you, Judge. And if I have
15 anything further to address, we can do that on Tuesday.

16 THE COURT: All right.

17 MR. MASTERSON: Thank you very much.

18 THE COURT: Uh-huh.

19 MR. BENDOR: Your Honor, if I may.

20 THE COURT: Yes.

21 MR. BENDOR: Just for the record, I've been present at
22 numerous interviews -- and I haven't been present with
23 Mr. Masterson at any interviews, I don't know if he has been
24 present -- and I have seen counsel on numerous times objecting
25 on the grounds of privilege or on other grounds, and counsel

CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 35

1 have requested for the monitor doing the interview to state the
2 Bates number or to show them the document. So those sorts of
3 things are happening in the interviews and, in terms of the
4 documents have been, to my experience, worked out in the course
5 of the interviews.

6 THE COURT: All right.

7 MR. POPOLIZIO: Your Honor, may I --

8 THE COURT: You know what? We're not going to get in
9 a big argument about this now, Mr. Popolizio.

10 MR. POPOLIZIO: I don't intend to argue, Your Honor; I
11 just wanted to comment.

Emerg Hearing 8-7-15.txt

12 THE COURT: Okay.

13 MR. POPOLIZIO: And that is --

14 THE COURT: Yes, please, a microphone.

15 MR. POPOLIZIO: Yes. I'm sorry.

16 That's true. There are times when I have, and others
17 have, asked for Bates numbers and whatnot. I asked for copies,
18 you know, maybe we could do that. I didn't want, you know,
19 prior notice, but just so that we can all look at the same
20 thing when we're in the room, as Mr. Masterson has shared with
21 you. And the answer that was given is that, from Chief Anders,
22 that he would ask. So I just think it's fair, and it would
23 make it run, I think, smoother.

24 THE COURT: Well, I will talk to them about that.

25 Certainly, as I've indicated, all parties who want one are

CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 36

1 going to be given a copy of the transcript. And if you feel
2 like there's issues that the transcripts reveal, you'll have
3 the chance to raise those.

4 MR. POPOLIZIO: Yes, and we discussed that also, Your
5 Honor. However, if, say, it's not identified by Bates or
6 otherwise, or date, and the interview is moving, discussion was
7 had about that also, and it was said, well, I read right from
8 it. You could find that language.

9 My response to that is, and I don't mean to -- to make
10 light of it, is we have lots of documents. So --

11 THE COURT: Well --

12 MR. POPOLIZIO: -- we would have to search that. It's
13 a haystack to find the needle.

14 THE COURT: Let me just say, and I'm going to hear
15 Mr. Masterson out on Tuesday, but these really -- these
16 interviews of the monitor aren't your interviews; they're the

Emerg Hearing 8-7-15.txt

17 monitor's interviews to perform the monitor's functions.

18 As I've said, that doesn't mean that you won't have
19 the chance to depose whoever you want to impose, and certainly
20 we can be reasonable, and, you know, reasonable requests, if we
21 can accommodate them, like documents, identification of
22 documents, to the extent we haven't done that, I'll talk to
23 them about that, and then we can raise that on Tuesday. We
24 don't have very long to go and we'll do that on Tuesday.

25 So I will see the parties Tuesday morning, 9 o'clock.

CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 37

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1 Those will be the issues that are discussed.

2 Yes, Mr. Walker.

3 MR. WALKER: Excuse me, Your Honor. I just want to
4 note for the record you made reference a little while ago to
5 the sheriff's having filed a response to the DOJ motion for
6 intervention, and I just wanted you to be aware that the County
7 has also filed a response. It was filed late last night, so it
8 perhaps hasn't landed on your desk yet, but --

9 THE COURT: Is it different than the sheriff's
10 position?

11 MR. WALKER: There are some differences, yes, Your
12 Honor.

13 THE COURT: Well, I indicated to you, and maybe we
14 need to discuss this sooner rather than later, I'm really not
15 sure, as it relates to the merits of this lawsuit, that you're
16 in a position to take any position different than the Sheriff's
17 office, and I think we discussed that last week. You were
18 going to brief that issue for me, or address it for me in
19 further detail.

20 MR. WALKER: And I haven't had the opportunity to do

Emerg Hearing 8-7-15.txt

21 that yet, Your Honor. The differences just have to do -- and I
22 think they're slight -- have to do with the scope of the
23 intervention.

24 THE COURT: All right. Well, I'll invite you to
25 provide me whatever authority you have on the County's ability
CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing 38

♀

1 in this case to take substantive positions that are different
2 than the Sheriff's Office. That will be an interesting issue.

3 MR. WALKER: We'll be happy to address it, Your Honor.

4 THE COURT: All right. Mr. Como?

5 MR. COMO: Your Honor, just one other issue.

6 Yesterday we filed a motion for summary judgment on
7 behalf of Chief Sands, and perhaps on Tuesday we could set a
8 briefing schedule on that, unless the Court intends to just
9 follow the briefing schedule set forth in the rules.

10 THE COURT: Why wouldn't I do that?

11 MR. COMO: Just because we're sort of in the middle of
12 a contempt hearing and, you know --

13 THE COURT: And some people might need longer time?

14 I guess that's a point. If people feel like they need
15 a longer time to respond to the motion, would you please so
16 indicate on Tuesday, in light of the schedule?

17 MR. BENDOR: Yes, Your Honor, we can.

18 Plaintiffs are of the position that this issue has
19 been heard by the Court and ruled on and does not require
20 further briefing to deny the motion, and we could talk about
21 that now or on Tuesday.

22 THE COURT: All right. Anything else?

23 All right. Thank you all.

24 THE CLERK: All rise.

25 (Proceedings concluded at 1:40 p.m.)

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Emerg Hearing 8-7-15.txt

CV07-2513, Melendres v. Arpaio, 8/7/15 Hearing

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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly
appointed and qualified to act as Official Court Reporter for
the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control.

DATED at Phoenix, Arizona, this 10th day of August,
2015.

s/Gary Moll

EXHIBIT 15

Status Conference 8-11-15.txt

1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA
3
4 Manuel de Jesus Ortega Melendres,)
5 et al.,)
6 Plaintiffs,) No. CV 07-2513-PHX-GMS
7 vs.) Phoenix, Arizona
8 Joseph M. Arpaio, et al.,) August 11, 2015
9 Defendants.) 9:04 a.m.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
(Status Conference)

22 Court Reporter: Gary Moll
23 401 W. Washington Street, SPC #38
24 Phoenix, Arizona 85003
(602) 322-7263
25 Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 2

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1 A P P E A R A N C E S
2

Status Conference 8-11-15.txt

3 For the Plaintiffs:
American Civil Liberties Union Foundation
4 Immigrants' Rights Project
By: Cecillia D. Wang, Esq.
5 39 Drumm Street
San Francisco, California 94111
6
American Civil Liberties Union Foundation
7 Immigrants' Rights Project
By: Andre Segura, Esq. - Telephonically
8 125 Broad Street, 18th Floor
New York, New York 10004
9
American Civil Liberties Union of Arizona
10 By: Joshua David R. Bendor, Esq.
P.O. Box 17148
11 Phoenix, Arizona 85011
12
Covington & Burling, LLP
By: Michelle L. Morin, Esq. - Telephonically
13 333 Twin Dolphin Drive, Suite 700
Redwood Shores, California 94065
14
For the Defendant Maricopa County:
Walker & Peskind, PLLC
15 By: Richard K. Walker, Esq.
16 By: Charles W. Jirauch, Esq.
SGA Corporate Center
17 16100 N. 7th Street, Suite 140
Phoenix, Arizona 85254
18
For the Defendant Joseph M. Arpaio:
Jones, Skelton & Hochuli, PLC
19 By: A. Melvin McDonald, Jr., Esq.
By: John T. Masterson, Esq.
20 By: Joseph T. Popolizio, Esq.
21 2901 N. Central Avenue, Suite 800
Phoenix, Arizona 85012
22
For the Defendant Joseph M. Arpaio and Maricopa County
23 Sheriff's Office:
Iafrate & Associates
24 By: Michele M. Iafrate, Esq.
649 N. 2nd Avenue
25 Phoenix, Arizona 85003

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 3

A P P E A R A N C E S

1
2
3 For the Movants Christine Stutz and Thomas P. Liddy:
Broening, Oberg, Woods & Wilson, PC
4 By: Terrence P. Woods, Esq.
P.O. Box 20527
5 Phoenix, Arizona 85036
6
For the Movants Maricopa County Attorney's Office and Maricopa
County Attorney William Montgomery:
7 Ridenour Hienton, PLLC
Page 2

8 Status Conference 8-11-15.txt
By: Ernest Calderon, Esq.
Chase Tower
201 N. Central Avenue, Suite 3300
9 Phoenix, Arizona 85004

10 For the Intervenor United States of America:
United States Department of Justice - Civil Rights
11 By: Edward G. Caspar, Esq. - Telephonically
By: Paul Killebrew, Esq. - Telephonically
12 950 Pennsylvania Avenue NW, 5th Floor
Washington, D.C. 20530

13 For Deputy Chief Jack MacIntyre:
Dickinson Wright, PLLC
14 By: Gary L. Birnbaum, Esq.
1850 North Central Avenue, Suite 1400
15 Phoenix, Arizona 85004

16 For Chief Deputy Gerard Sheridan:
Mitchell Stein Carey, PC
17 By: Lee D. Stein, Esq.
1 Renaissance Square
18 2 North Central Avenue, Suite 1900
19 Phoenix, Arizona 85004

20 For Executive Chief Brian Sands:
Lewis, Brisbois, Bisgaard & Smith, LLP
21 By: Dane A. Dodd, Esq.
2929 N. Central Avenue, Suite 1700
22 Phoenix, Arizona 85012

23 For Lieutenant Joseph Sousa:
David Eisenberg, PLC
24 By: David Eisenberg, Esq.
2702 N. 3rd Street, Suite 4003
25 Phoenix, Arizona 85004

♀ CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 4

1 A P P E A R A N C E S

2

3 Also present:
Chief Raul Martinez, Deputy Monitor - Telephonically
4 Deputy Chief Jack MacIntyre
Lieutenant Joseph Sousa
5 Raphael O. Gomez, Esq.

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Status Conference 8-11-15.txt

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CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 5

1 P R O C E E D I N G S

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3 THE COURT: Please be seated.

4 THE CLERK: This is civil case number 07-2513,
5 Melendres, et al., v. Arpaio, et al., on for status conference.
6 Counsel, please announce your appearances.

7 MS. WANG: Good morning, Your Honor. Cecillia Wang of
8 the ACLU for the plaintiffs.

9 THE COURT: Good morning.

10 MR. BENDOR: Good morning. Josh Bendor of the ACLU of
11 Arizona for plaintiffs.

12 THE COURT: Good morning.

13 MS. IAFRATE: Good morning, Your Honor. Michele
14 Iafrate on behalf of Sheriff Arpaio and the alleged nonparty
15 contemnors.

16 THE COURT: Good morning.
Page 4

Status Conference 8-11-15.txt

17 MR. MASTERSON: Good morning, Judge. John Masterson
18 and Joe Popolizio for Sheriff Arpaio.

19 THE COURT: Good morning.

20 MR. WALKER: Good morning, Your Honor. Richard walker
21 and Charles Jirauch on behalf of that portion of the Maricopa
22 County government embodied in the Board of Trustees, the county
23 manager, and the county employees who work under their
24 direction and supervision.

25 THE COURT: Let me just ask you, Mr. Walker, the
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 6

1 people you've just set forth are not parties to this action,
2 are they?

3 MR. WALKER: They are not.

4 THE COURT: Thank you.

5 MR. McDONALD: Good morning, Your Honor.
6 Mel McDonald, special appearance for Sheriff Joe Arpaio.

7 THE COURT: Good morning.

8 MR. WOODS: Good morning, Your Honor. Terry Woods. I
9 represent nonparties Liddy and Stutz.

10 MR. DODD: Good morning, Your Honor. Dane Dodd on
11 behalf of retired Chief Brian Sands.

12 THE COURT: Good morning.

13 MR. BIRNBAUM: Good morning, Your Honor. Gary
14 Birnbaum, appearing specially for Deputy Chief MacIntyre, who
15 is also present in the courtroom.

16 MR. CALDERON: Good morning, Your Honor. Ernest
17 Calderon on behalf of Maricopa County Attorney Bill Montgomery
18 and his office, nonparty.

19 MR. STEIN: Good morning, Your Honor. Lee Stein on
20 behalf of Chief Deputy Sheridan, who is not present.

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21 Status Conference 8-11-15.txt
THE COURT: And you're specially appearing, Mr. Stein?
22 MR. STEIN: I am. I apologize, I'm specially
23 appearing.
24 MR. EISENBERG: Good morning, Your Honor.
25 MR. CASPAR: Good morning, Your Honor. This is Edward
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 7

1 Caspar and Paul Killebrew with the U.S. Department of Justice,
2 counsel for the United States relevant to the intervention
3 motion.
4 THE COURT: Good morning.
5 MR. KILLEBREW: Good morning.
6 MR. EISENBERG: Good morning, Your Honor. David
7 Eisenberg, specially appearing on behalf of Lieutenant Joseph
8 Sousa. The lieutenant is present.
9 MR. GOMEZ: Good morning, Your Honor. My name is
10 Raphael Gomez with the U.S. Department of Justice in Washington
11 concerning the Montgomery case.
12 THE COURT: Good morning.
13 Is there anyone else on the line?
14 MR. SEGURA: Good morning, Your Honor. This is Andre
15 Segura for the plaintiffs from the ACLU. There are a few
16 others on the line.
17 CHIEF MARTINEZ: Good morning, Your Honor. Chief Raul
18 Martinez from the monitoring team.
19 THE COURT: Good morning, Chief.
20 CHIEF MARTINEZ: Good morning.
21 MS. MORIN: Good morning, Your Honor. Michelle Morin
22 of Covington & Burling for the plaintiffs. I believe my
23 pro hac vice is still being processed or en route to the -- to
24 the court.
25 THE COURT: Anyone else?

Status Conference 8-11-15.txt

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 8

1 Is Mr. Klayman on the line?

2 All right. First matter, why don't we discuss the
3 United States' motion to intervene. I have no objections to
4 that motion. I did receive a reply from Mr. Caspar in support
5 of his motion in which he rejects -- or chafes at the
6 limitations which Maricopa County, from his perspective, sought
7 to impose on his intervention.

8 Let me just say, and I'll hear any parties who want to
9 discuss it, but it seems to me that I'm going -- in light of
10 the fact that there aren't any objections to the intervention,
11 that I am going to allow it. And if there are objections as to
12 the scope of the intervention, I'll hear them as we go along,
13 so that if you believe that the United States is exceeding the
14 scope of this matter, I will allow you to raise those as we go
15 along. But it seems better to me to do that in a fact-specific
16 context than try to carve out some sort of limitation at this
17 point when I don't know what possible issues might be raised.

18 It certainly seems -- Mr. Masterson, Mr. Popolizio, I
19 don't know who's going to address this, but you have now
20 arrived at some sort of settlement completely with the
21 Judge Silver action?

22 MR. MASTERSON: Judge, I believe we have. Now, it's
23 still contingent on Judge Silver's approval of one certain
24 settlement agreement between the United States and the
25 defendants, but we have resolved all the issues as between the

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 9

1 United States and my clients.

2 I believe Mr. Walker has some -- Mr. Walker may want

Status Conference 8-11-15.txt

3 to address issues he may have in that case, but we believe on
4 behalf of Sheriff Arpaio we have resolved all pending claims
5 with the United States through settlement agreements and then
6 the intervention into this case.

7 THE COURT: All right. Let me just say,
8 Mr. Masterson, it does seem to me, and I don't -- and maybe you
9 didn't make this objection or limitation, but I think
10 Mr. Caspar indicated that they objected to any notion that they
11 wouldn't be able to participate in the retrial of this case,
12 and I think you've frankly indicated to me, and it makes sense,
13 or at least I understand your position, that if you get me
14 recused, you may well also seek to re -- from the Ninth
15 Circuit, you may well also seek to vacate my May 2013 findings
16 of fact and the appropriate -- or the associated supplemental
17 permanent injunction.

18 I don't know that you'll try to do that, but you may,
19 and you've indicated that you may try to do that if you achieve
20 success. I appreciate that straightforward assessment, but it
21 seems to me at this point, because, as I understand it, and
22 maybe I'm wrong about this, Judge Silver's order incorporated
23 the order that I'd entered in this case, if that gets vacated,
24 I don't see why I should prevent the United States from
25 assisting in the retrial of the case. And so that's one of the

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 10

1 reasons why I'm disinclined to impose any limitations on their
2 intervention at this point, but certainly at that point you can
3 raise the matter.

4 If that point were to occur, of course, it wouldn't be
5 in front of me, and so I want to make clear that their motion
6 for intervention that I'm going to grant is without prejudice
7 to you raising individual objections as to its scope as we go

Status Conference 8-11-15.txt

8 along, but I'm not going to limit it at this point unless you
9 have some additional concerns you want to raise.

10 MR. MASTERSON: I do not, Judge, and that's how I
11 understood the Court's intended ruling.

12 THE COURT: Okay. Did you have anything that you
13 wanted to raise, Mr. Walker?

14 MR. WALKER: No, Your Honor. I understand your
15 inclination on this and we will raise objections as we go
16 along. As I pointed out in the response, though, we have a
17 concern that the Department of Justice is trying to do an
18 end run around the consequences of the action that it chose to
19 bring before Judge Silver and to litigate before Judge Silver,
20 and to that extent, we don't think the Department of Justice,
21 as with any party, should be permitted to do that.

22 THE COURT: I think I understand your concerns and
23 objections. I think they'll probably be better placed in a
24 particular fact-specific focus, and we can raise it at that
25 time. Certainly, I'll note, and I don't think it's news to
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 11

1 anybody, that the ACLU and Covington and the law firms before
2 that have borne the brunt of this litigation, along with the
3 plaintiffs.

4 Ms. Wang, do you have anything you wish to say on the
5 motion to intervene?

6 MS. WANG: No, Your Honor.

7 THE COURT: All right. Well, then I will file an
8 order, probably within later today or in a day or two, granting
9 that motion. And I'm granting it without limitation but I do,
10 as I think I've made clear, grant it without prejudice to any
11 assertion by the defendants that the United States is exceeding

Status Conference 8-11-15.txt

12 the appropriate scope of the intervention in a fact-specific
13 context.

14 we have before us the pending renewal of the
15 pro hac vice application of Larry Klayman. Mr. Klayman is not
16 here. I had indicated my intent to hear that today and I guess
17 it's still my intent.

18 I note that the sheriff hasn't taken any position on
19 that intervention. I notice that plaintiffs have opposed it.
20 I notice that to the extent that Maricopa County is a separate
21 entity and a nonparty, they've also introduced a filing.

22 I will say I have read the filing. I'm not sure that
23 I'm going to take it into account, and I'm not sure that I need
24 to. When Mr. Klayman was here, I asked him to address some
25 specific issues, and he did not do that, from my perspective,

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 12

1 in his reply, and they remain for me very concerning.

2 It does seem to me that Mr. Klayman filed -- entered
3 with Mr. Moseley on Mr. Moseley's previous attempt, and Moseley
4 is an associate of Mr. Klayman's, and Mr. Klayman filed and
5 represented himself as of counsel on all of Mr. Moseley's
6 previous briefs. Mr. Klayman represents Sheriff Arpaio in the
7 District of Columbia action and he doesn't seem to contest
8 that. He says that he's not going to seek to challenge Sheriff
9 Arpaio here, and yet in his reply he is vigorously critical of
10 Sheriff Arpaio's representation, which I believe is -- and
11 infused issues and invective in this lawsuit that are simply
12 not issues, and suggests that he cannot fulfill his duty to
13 both of his clients -- Sheriff Arpaio, on the one hand, and
14 Mr. Montgomery on the other -- especially if he is not going to
15 seek in any way to challenge what Sheriff Arpaio has said in
16 his testimony, which would tend to indicate that

Status Conference 8-11-15.txt

17 Mr. Montgomery -- and again, I'm not saying it does indicate
18 it, but based on the testimony as we have it to date the
19 sheriff is -- I think it was Chief Deputy Sheridan who said
20 that the representation was that these were documents taken
21 from the CIA, and that both Chief Deputy Sheridan -- and by
22 "the representation," I mean the representation that
23 Mr. Montgomery made to the MCSO -- and that both the sheriff
24 and the chief deputy have indicated that that material appears
25 to be extremely unreliable and junk.

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CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 13

1 Certainly, some of the documents that have been
2 produced since then seem to support the sheriff's view, and as
3 it relate -- and Mr. Klayman says that he wishes to intervene
4 in this action to protect his ownership rights in the property,
5 and yet I asked him how anything about this action has to do
6 with whether or not he has ownership in the property. The only
7 thing we've done is turned it over -- at this point, authorized
8 the Department of Justice to look at it, and they are under an
9 order not to diffuse it in any way without further order of
10 this Court, and I asked him how that in any way impaired
11 Mr. Klayman's ownership interest and he didn't have an answer
12 for me at that time, and he doesn't provide an answer in his
13 reply, at least as I read it.

14 I also pointed out that at least according to the
15 testimony and the documents that have been provided as I
16 understood them -- and again, I understand we don't have a
17 complete story here -- that what Mr. Montgomery was purporting
18 to be able to do to the Maricopa County Sheriff's Office was
19 reproduce phone calls and computer records between this Court,
20 the Department of Justice, between the Department of Justice

Status Conference 8-11-15.txt

21 officials, and phone taps that may have taken place as against
22 the sheriff, as against Mr. Popolizio and Mr. Masterson, as
23 against this Court, as against other judges, in 2009 and 2010.
24 And I didn't understand -- when he said to me that the District
25 Court of Nevada had already found that he had certain materials
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 14

1 related to a company that he operated and they had ruled in
2 2006 and 2007 that he owned those materials, I didn't
3 understand how, if they were claiming those were the same
4 materials, you could get anything from 2009 and 2010 on them,
5 so we must be talking materials that are different, if they are
6 as he represented them to be, than the materials from the
7 district court judgment, and again, he was unable to answer
8 that question and does not answer that question in his reply.

9 And again, I think that it's possible that Mr. Klayman
10 himself may be a witness in this case, based on the documents
11 that have been disclosed. And I'm not saying he will be a
12 witness and I'm not even saying he has relevant testimony, but
13 the documents disclosed in connection with the motion to recuse
14 I think suggest strongly that Mr. Klayman himself may have even
15 been involved in efforts to convince Maricopa County that
16 Mr. Montgomery was providing them with real stuff.

17 And for all those reasons -- I appreciate what
18 Mr. Klayman says, that Mr. Montgomery has difficult finding
19 counsel, and I'm certainly not preventing him from appearing
20 here, either individually unrepresented or with any other
21 counsel. But I do not believe that Mr. Klayman or anyone in
22 his law firm, for reasons I've stated, including the fact that
23 in addition to what I view to be his -- at least, as far as I
24 can tell to date, unwarranted attacks on Ms. Iafrate and others
25 of the sheriff's counsel, and I think he's also attacked this

Status Conference 8-11-15.txt

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 15

1 Court, he's attacked plaintiffs, he's attacked everybody else
2 and raised all kinds of issues that seem to me to be
3 extraneous, including the allegation that this Court and
4 various newspapers in town have a bias against the sheriff, it
5 just seems to me that in light of his conflict, in light of the
6 fact that I don't think he's raised -- he's raising anything
7 that relates to this case and that would merit intervention,
8 and in light of the fact that his behavior suggests that he
9 would infuse invective in this lawsuit and issues that are
10 simply not at issue, and in light of his past disciplinary
11 history, as well as in light of the past disciplinary history
12 of Mr. Moseley, I am not granting his motion to intervene at
13 this point.

14 Does anybody want to be heard on that one?

15 MS. WANG: No, Your Honor.

16 MR. MASTERSON: I have nothing, Judge.

17 MR. WALKER: The County has nothing further, Your
18 Honor.

19 THE COURT: All right. I think now we need to start
20 focusing in on narrowing the issues and determining what's
21 going to take place in the September hearing if it goes
22 forward, and it seems to me there's some issues to address in
23 that respect.

24 First is the 1500 driver's licenses or other
25 identifications and the PSB investigation of those matters. We

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 16

1 currently have those identifications at the Marshals'. I
2 believe, but I'm not sure, that PSB has initiated an

Status Conference 8-11-15.txt

3 investigation into those identifications as well as the other
4 identifications and the other matters that we also have, and I
5 need to know whether the MCSO needs to get access back to those
6 identifications to figure out where they came from or to
7 complete their investigation, I need to know what access
8 plaintiffs would like to those identifications, and I need to
9 know if the monitor needs those identifications for purposes of
10 evaluating the adequacy of MCSO's investigation, but I presume
11 that that would abide the completion of MCSO's investigation.
12 But since it doesn't seem to be contested that a number of
13 those identifications involve members of the plaintiff class,
14 it seems to me that it may well be relevant.

15 I don't know, do you want to be heard on this,
16 Ms. Wang?

17 MS. WANG: Yes, Your Honor. Thank you.

18 Your Honor, plaintiffs would seek production of the
19 1500 identification documents and further discovery, so that we
20 can determine whether any of the owners of those documents were
21 victims of violations of the preliminary injunction or other
22 constitutional violations by MCSO personnel.

23 we believe that they're certainly discoverable and
24 very -- potentially go to the heart of the constitutional
25 violations that were found at trial in this case. So we would

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 17

1 seek them and other documents, for example, any way to link
2 those identification documents to departmental reports or
3 incident reports that could link the identifications to an
4 owner and to a particular traffic stop or other encounter with
5 MCSO personnel.

6 THE COURT: Ms. Iafrate, Mr. Masterson, I assume that
7 PSB is -- that's part of the investiga- -- what they're doing

Status Conference 8-11-15.txt

8 in their own investigation.

9 MR. MASTERSON: Judge, PSB can certainly do that, but
10 there's a couple things with respect to these identifications
11 that I'd like to clear up, and a couple of those were
12 misstatements by the monitor. And one of the misstatements by
13 the monitor was made on July 24th, where the monitor told the
14 Court that these particular documents were slated for
15 destruction, and had this matter not come to the monitor's
16 attention and they made the kind of inquiry that had been paid,
17 then they would have been destroyed.

18 THE COURT: You know, what I understood, and maybe I
19 misunderstood him, was that they were slated for destruction
20 when they were in Property, but that they weren't in Property
21 when he found them. I thought they were with PSB.

22 MR. MASTERSON: They were slated for destruction
23 between 2006 and 2010, between five and nine years ago, and
24 they were in Property.

25 THE COURT: Yeah, I think that was what my
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 18

1 understanding was as well.

2 MR. MASTERSON: Then they were removed from Property,
3 according to MCSO policy, taken into possession by a sergeant
4 who was going to give a training class. He didn't give the
5 training class and had sought to return the IDs to Property.
6 Property, then having known of this litigation, brought it to
7 PSB's attention and here we are.

8 THE COURT: Yeah, that is my understanding, what
9 you've just said.

10 MR. MASTERSON: Okay. Because I was afraid that the
11 Court was convinced -- the monitor seemed to me to indicate

Status Conference 8-11-15.txt

12 that he saved the day and saved these IDs from destruction,
13 when that was never going to happen.

14 THE COURT: No. The only thing I did understand the
15 monitor to say, in fairness, is that he discovered that the
16 MCSO wished to withhold those documents from his attention.

17 MR. MASTERSON: Well, that I don't know, and I don't
18 know whether that's an accurate statement by the monitor or
19 not.

20 THE COURT: And maybe I've misparaphrased him, but
21 that was my understanding, and that remains my understanding,
22 but I did not understand -- I did understand that at one point
23 they were scheduled for destruction but that they were
24 removed -- that was when they were in Property, and they were
25 removed from Property, and they weren't under any imminent risk

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 19

1 of destruction at that point; they were just at an imminent
2 risk of non-disclosure, which is why --

3 MR. MASTERSON: Okay.

4 THE COURT: -- I ordered them to be seized.

5 MR. MASTERSON: I understand. Thank you, then, Judge.

6 The other misstatement by the monitor is -- and again,
7 maybe it's an implication I'm drawing from what he said -- but
8 he made an allegation that the Property Unit is being used as a
9 repository for holding away from public scrutiny or court
10 scrutiny documents that were obtained unscrupulously or
11 illegally. And I'll tell you what. I'd like the monitor to
12 come forth and give us the evidence that any of these IDs were
13 taken unscrupulously or illegally. In fact, just one. Just
14 come prove to us that one of them was taken away.

15 THE COURT: Well, is there any basis -- I think that
16 that's going to be at the very heart of the hearing that we're

Status Conference 8-11-15.txt

17 going to have, isn't it?

18 MR. MASTERSON: Well, I suppose, Judge, and I suppose
19 we could try to determine the origin of every one of those
20 1459, but I think it's going to be extraordinarily difficult.
21 I mean, these IDs could come into the possession of MCSO in so
22 many different ways.

23 THE COURT: Well, let me just tell you my concern, and
24 I believe that there is some testimony when I talked to deputy
25 chief -- Chief Deputy Sheridan about this. There was some

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 20

1 representation initially that these matters were just taken --
2 these identifications were taken for fraud training by only a
3 few officers. Then I think it became quite clear that many
4 officers were taking identifications as a matter of course.
5 They were taking -- some were taking drivers's -- not just
6 driver's licenses, but most of them were Mexican
7 identification cards printed by the Mexican government, which,
8 I mean, why would they forge those? And I discussed that some
9 with Chief Deputy Sheridan.

10 And then there was -- the monitor did some
11 investigation, as I recall, where all throughout the various --
12 is it districts or divisions of MCSO -- they have bins, and
13 officers acknowledge that they just seized these
14 identifications and put them in the bins without putting them
15 in Property, and it seems to me, in addition with the other
16 evidence that's been found that was disclosed prior to your
17 entry in this lawsuit but I'm sure you've been made aware of
18 that there was a rather -- or at least there's the potential of
19 a rather widespread practice of just seizing folks'
20 identification cards without legal justification for doing so,

21 Status Conference 8-11-15.txt
21 which is one of the issues in this lawsuit. And it seems to me
22 that that's one of the things we're going to address at the
23 hearing.

24 Does that resolve your concern about your ability to
25 address that --

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 21

1 MR. MASTERSON: Well --

2 THE COURT: -- that assumption?

3 MR. MASTERSON: I understand there's been allegations
4 that documents have been seized unlawfully, but there are many
5 instances in which a deputy sheriff can lawfully seize --

6 THE COURT: Sure.

7 MR. MASTERSON: -- a license plate, a driver's
8 license.

9 THE COURT: And when he does that, I presume there's
10 a -- or there should be a procedure by which that is accounted
11 for in Property or elsewhere.

12 MR. MASTERSON: Well, I suspect that if it came in --
13 it would depend on how it came into the deputy's possession.
14 You could have found it, found items as well.

15 THE COURT: And, you know, we can go through all that
16 if you want to, but it doesn't seem to me that there's really
17 an issue that -- well, we'll wait and see.

18 MR. MASTERSON: I guess what concerns me, Judge, is
19 the -- I mean, we've got a significant preliminary and final
20 injunction to comply with, and we're kind of getting
21 sidetracked from doing just that. And here's another instance
22 where now we're going to have to go look at 1459 individual IDs
23 when there's absolutely no proof, one, that any of them belong
24 to the plaintiffs' class. I will give you that in the few I
25 looked through, I found one or two Hispanic names in maybe the

Status Conference 8-11-15.txt

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 22

1 24, 25 I looked at, so I don't know whether they're in the
2 plaintiffs' class or not. But I can tell you an awful lot of
3 them were blatantly --

4 THE COURT: Well, I'll tell you --

5 MR. MASTERSON: -- horrible fabrications of driver's
6 licenses.

7 THE COURT: Well, let me just tell you, Mr. Masterson,
8 that to date, and I don't mean to be pejorative in any way, but
9 to date, your client's track record for producing requested
10 documents and to destroy -- is very poor. Your client has
11 destroyed documents that were definitely responsive to what
12 happened here.

13 The description I've got, and I haven't looked at
14 them, is that about half -- I think that I'm stating this
15 right, about half of those identifications involved members of
16 the plaintiff class or what appear to be members of the
17 plaintiff class. There are a number of others that involve
18 members of the plaintiff class that I've already seen that are
19 just unaccounted for.

20 And I think, it seems to me, unless you can tell me
21 otherwise, that I heard evidence that MCSO just took these
22 things from folks that they were arresting. Not everybody, to
23 be sure, but that enough, and certainly more than Sergeant
24 Armendariz were doing it, and that seems to me to be a
25 significant -- you know, if you -- significant deprivation, or

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 23

1 possibly significant deprivation of their personal property
2 that MCSO had no basis to take in at least some instances.

Status Conference 8-11-15.txt

3 Because that information, and because those documents
4 which were in MCSO's possession were requested and never
5 returned in the underlying lawsuit, I think that plaintiffs'
6 class has a right to say this was another issue that would have
7 been raised in the underlying lawsuit if there had been
8 appropriate disclosure.

9 And so while I agree with you and I think your point
10 is a correct one, that we need focus on the remedy to the
11 plaintiff class here; we need to focus on implementing the
12 remedies that I've already ordered. But in addition, we need
13 to realize that there are other remedies that may well have
14 been ordered if your client would have complied with its
15 discovery obligations, which it admittedly did not do.

16 And so this hearing -- and you're right, we shouldn't
17 lose focus of the need for your clients to comply with existing
18 orders -- but this hearing is also, a major purpose of it is to
19 see what needs to be done to rectify the rights of the
20 plaintiff class in light of the fact that your client withheld
21 all these documents.

22 MR. MASTERSON: Well, I understand, and I understand
23 with respect to the Armendariz documents that's a concern.
24 What I'm focusing on are the 1459 when there's absolutely no --
25 not a scintilla of evidence that any of these were taken

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 24

1 unlawfully or that anything unlawful was done with them, and --

2 THE COURT: Well, so do you want access to them? Do
3 you need access to them?

4 MR. MASTERSON: Well, if the Court is going to
5 compel -- well, if the Court's going to make an inquiry into
6 the origin of each one of these 1459 documents, I'd certainly
7 like to have access to whatever -- or however that inquiry is

Status Conference 8-11-15.txt

8 being made.

9 THE COURT: Well, yeah, and perhaps you'll end up
10 making the inquiry. But certainly I don't think there's any
11 need to inquire as to all 1459, since it's my understanding
12 that a substantial number of them nobody contests is a member
13 of the plaintiff class.

14 But it does seem to me that you have a track record
15 that is at least worthy of investigation about whether or not
16 these identifications were correctly seized, because clearly, I
17 think, and I don't wish to misstate the record, but we have, I
18 believe, a number of officers who have indicated that they just
19 took those things as trophies, they hung them on the wall; and
20 the monitor I think did say this to me, Chief Martinez, you can
21 correct me if I'm wrong, that in their interviews out in the
22 districts they just took those things and threw them in a bin.
23 And they called the bin something like the unicorn bin. And I
24 forget the reason why, but it was something like make-believe
25 that they'd ever be put into Property or something. And that

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 25

1 was not the statement of my monitor; that was the statement of
2 your officers.

3 And so it seems to me that there is evidence that
4 there has been, at least among a number of MCSO officers, an
5 ongoing practice of doing this kind of thing, which is a
6 substantial deprivation, or could be a substantial deprivation
7 of rights of the plaintiff class. And simply because it may be
8 problematic now for you to find out where those licenses came
9 from, you know, if you had done it -- and again, I don't know,
10 but it seems to me that if you would have recorded these in
11 Property pursuant to an arrest, or a stop, which would be

Status Conference 8-11-15.txt

12 normal police procedure, it wouldn't be problematic for you to
13 say: This document was seized in connection with this stop.
14 But you didn't do that, so now you have to go back and see who
15 you stopped, and where and why, and it seems to me that that is
16 not an unreasonable request if in fact plaintiffs make it.

17 But you're certainly entitled, Mr. Masterson, to look
18 at those documents in conjunction with the plaintiffs, exclude
19 ones that really don't seem to implicate members of the
20 plaintiff class. And maybe you can make stipulations as to
21 others; it will make your life more easy. All I want to do in
22 this proceeding is figure out what we need to do to provide you
23 access, the plaintiffs access, and figure out where we need to
24 go from here so that we can proceed.

25 MR. MASTERSON: All right. So let me understand: Are
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 26

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1 we free, then, to meet with the plaintiffs to discuss how we're
2 going to go through these documents?

3 THE COURT: Sure. Absolutely.

4 MR. MASTERSON: In addition, there's an awful large --
5 I shouldn't say that. The ones I looked at, a large number of
6 them were blatantly false documents. A driver's license,
7 somebody was apparently trying to -- my guess, trying to buy
8 booze and made themselves to be 25, and it was a horrible
9 fabrication of an Arizona driver's license. There's a lot of
10 those. So I think we could weed --

11 THE COURT: By all means, weed --

12 MR. MASTERSON: -- weed those out, too.

13 THE COURT: Yes. Meet with plaintiffs, and if, you
14 know, they can agree that they should be weeded out, I think
15 that, you know. I will tell you for the benefit of what
16 history says is that it seems to me that counsel have --

Status Conference 8-11-15.txt

17 despite the sharp division of legal authority and legal
18 positions in this lawsuit, counsel have been able, at least
19 frequently, to be very professional in terms of limiting the
20 issues and simplifying them, which I think -- I have no reason
21 to think you can't do here.

22 MR. MASTERSON: Thank you, Judge. That's all I have
23 on these issues.

24 THE COURT: All right.

25 Ms. Wang.

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 27

1 MS. WANG: Your Honor, may I respond briefly to some
2 of the things Mr. Masterson has presented?

3 THE COURT: Yes.

4 MS. WANG: Thank you. Your Honor, earlier I responded
5 to the Court's narrow question about whether plaintiffs are
6 seeking discovery of the 1459 IDs. Mr. Masterson brought up an
7 important point, which is what happened with those IDs once
8 their existence was discovered by the defendants.

9 To be clear, plaintiffs will also seek discovery into
10 those matters. We think those also go centrally to compliance
11 and defendants' compliance in this case, including whether they
12 have forthrightly come forward with evidence and whether they
13 have failed to comply with the Court's orders regarding
14 disclosure of things like the IDs, and whether they have taken
15 inappropriate steps to fail to disclose those documents.

16 We think those issues are centrally important to this
17 case and to the rights of the plaintiff class, and we do intend
18 to take discovery prior to the resumption of the evidentiary
19 hearing on September 22nd.

20 We would be happy to meet and confer with the

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Status Conference 8-11-15.txt
21 defendants. For the past year or more, we have attempted to
22 work with them on various things and recently have asked for
23 their assistance in trying to locate people whose rights were
24 violated through violations of the preliminary injunction
25 order, and we would very much hope that the defendants would be
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 28

1 cooperative in trying to come up with a way to identify those
2 victims.

3 THE COURT: Thank you.

4 MS. WANG: Thank you.

5 THE COURT: Anybody else want to be heard on the 1500
6 IDs?

7 MR. WALKER: I have nothing to add, Your Honor.

8 THE COURT: All right. If you have nothing to add,
9 you can simply remain quiet; if you have something you want to
10 say, signal me.

11 what about the 50 hard drives and Mr. Mackiewicz's
12 hard drive? Mr. Gomez, do you want to come forward and tell us
13 what the government has done and what it intends to do?

14 I will say that I received the visit of a court
15 security officer prior to this hearing, just so everybody
16 knows. The court security officer said that while he had been
17 initially contacted through the Department of Justice, I could
18 take -- I could assert jurisdiction over him so that he
19 responds to my commands and not yours, Mr. Gomez.

20 MR. GOMEZ: That's correct, Your Honor.

21 THE COURT: All right. So do you want to tell us what
22 you have done to date?

23 MR. GOMEZ: We have contacted -- the Department of
24 Justice has contacted the court security office and requested
25 that they bring -- that two court security officers come down

Status Conference 8-11-15.txt

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 29

1 for copying of the two Banker Boxes and one hard drive --

2 THE COURT: Well --

3 MR. GOMEZ: -- of the Montgomery material.

4 THE COURT: -- there are 51 hard drives of the
5 Montgomery material.

6 MR. GOMEZ: That's correct, Your Honor.

7 THE COURT: So which hard drive are you talking about?

8 MR. GOMEZ: Back in May, the end of May, there had
9 been initially identified two Banker Boxes and one hard drive.
10 And then I believe at a subsequent time -- it may have been
11 even in July, but it could have been in June -- there were 50
12 additional hard drives, I believe, that were identified as
13 being Montgomery hard drives, at least as I was informed by the
14 court monitor.

15 The government initially had intended to -- its review
16 was to look at the two Banker Boxes and the one hard drive, and
17 then when it became aware that there were 50 additional
18 hard drives, some of which we don't know what the volume is in
19 each of the hard drives, we received an inventory from the
20 U.S. Marshals Service as to the hard drives, but no one has
21 opened those hard drives.

22 The client entities that I am dealing with for the
23 United States have decided that they would like to look -- go
24 forward with their review as to the two Banker Boxes and the
25 one hard drive and determine whether there's either property of

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 30

1 the United States or classified material in those documents,
2 and at that point make a determination whether they would then

Status Conference 8-11-15.txt

3 proceed to review the -- copy and review the 50 additional
4 hard drives.

5 I just want to say, Your Honor, that it's -- there's
6 also the possibility that while this review is going on, my
7 office at the Department of Justice is giving consideration as
8 to whether if a copy is made of the 50 hard drives, that either
9 someone from -- myself or someone -- myself and maybe some
10 other U.S. representatives may come, if it's agreeable to the
11 court monitor, to just look at some of the contents of those
12 hard drives if they're going to be copied.

13 One concern that the United States has, at least at
14 this point, is that we believe those are original hard drives,
15 they're not a copy of them at this point, and if the United
16 States -- if I were to go, and I have the technical people here
17 with me today, but if we were to go and open up any of those
18 hard drives, we potentially could change the metadata in the
19 hard drive, and while that may or may not be an issue, it may
20 not be an issue for the court monitor or for anyone else, if it
21 were to be an issue, we don't want to interject the United
22 States in that kind of a problem.

23 So I think at this point, just to be clear, the United
24 States will look at the -- is looking at -- we've copied the
25 two Banker Boxes and one hard drive. A representative of the

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 31

1 defendant was present yesterday at the FBI office along with, I
2 believe, Chief Sharon Kiyler was present from the court monitor
3 while we conducted the copying, and so we've made that copy and
4 we'll be taking that material back to Washington.

5 We will Bate number all the hard copy pages. We've
6 put them on PDFs. That way, if we do find something, we'll be
7 able to point -- be able to provide a Bate number page to the

Status Conference 8-11-15.txt

8 Court or to the court monitor as to what material, if it turns
9 out there's material the United States should take custody or
10 restrict access to.

11 THE COURT: Well, let me ask a question.

12 MS. Iafrate, were you going to ask a question?

13 MS. IAFRATE: I was actually going to inform the Court
14 regarding my knowledge of what happened yesterday.

15 THE COURT: All right.

16 MS. IAFRATE: Your Honor, my understanding was that
17 the Department of Justice --

18 THE COURT: Were you there? Did you --

19 MS. IAFRATE: I was not; a representative from my
20 office was there on my behalf. My understanding was that the
21 50 hard drives were going to be forensically copied yesterday.
22 That did not occur. Instead, what happened was the hard drive
23 that was taken from Chief Knight's office recently was the
24 hard drive that was indeed copied.

25 If you recall, Your Honor, the last time you and I
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 32

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1 spoke in court I had concerns regarding that hard drive because
2 it contains a vast amount of other things other than just
3 Montgomery material. And so you had asked me if I would like
4 first crack at that hard drive in order to catalog regarding
5 what's on it, what's relevant, what's not. That has not
6 occurred, obviously, prior to the copying of that one
7 hard drive.

8 My understanding was that yesterday and today was set
9 aside for the forensic copying of those 50 hard drives, which
10 did not occur. I now have concern regarding the one that was
11 copied, that it has other materials on it that you had provided

Status Conference 8-11-15.txt

12 me the opportunity to review prior to any copying.

13 THE COURT: I don't -- I mean, I'm not questioning
14 what you're saying, Ms. Iafrate. I don't have specific
15 recollection of what you're saying, but I don't question it.

16 Did you take me up on that or not?

17 MS. IAFRATE: The hard drive --

18 THE COURT: Did you say you wanted to have first crack
19 at the --

20 MS. IAFRATE: I did say that, yes, and you said very
21 well.

22 THE COURT: Okay. Well, I'll confirm that. If that's
23 so, then I'm going to require the FBI, before it -- or the
24 Department of Justice, before it does anything, to provide a
25 copy to Ms. Iafrate. And I'll give you the chance to review it
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 33

1 and to claim that certain materials don't have anything to do
2 with the materials provided by Montgomery and provide that
3 claim to the -- to me and to the monitor and the Department of
4 Justice. And I'll ask the Department of Justice at that time
5 to review -- to restrict your review to the materials that
6 Ms. Iafrate identifies as not being otherwise related.

7 which doesn't mean, if you contest the other
8 materials, that we can't raise that at a later -- at a later
9 date. But one of the things I am going to require,
10 Ms. Iafrate, is that you do what you're going to do with
11 dispatch.

12 MS. IAFRATE: Understood.

13 THE COURT: You have a problem with that, Mr. Gomez?
14 You wish to be heard on it?

15 MR. GOMEZ: May I confer just with one of the court
16 security officers, in terms of the technical --

Status Conference 8-11-15.txt

17 THE COURT: Yes.
18 MR. GOMEZ: -- copying?
19 (Pause in proceedings.)
20 CHIEF MARTINEZ: Your Honor, this is Chief Martinez.
21 May I add some information to what he said?
22 THE COURT: I'm sorry, Chief. What did you say?
23 CHIEF MARTINEZ: May I add some information to what
24 has been said about the 50 hard drives and the hard drives?
25 THE COURT: Yes. But keep in mind, Chief, that
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 34

1 because you're on a speakerphone, sometimes there's a
2 distortion and you cut out, so if you'd speak slowly and
3 clearly, that would be helpful.
4 CHIEF MARTINEZ: Yes, sir.
5 The copy that was the hard drive that was copied
6 yesterday for Mr. Gomez was the hard drive that was provided to
7 us back on April 24th or April 27th by Chief Knight.

8 THE COURT: So it's not --

9 CHIEF MARTINEZ: They received a copy of the
10 hard drive.

11 THE COURT: All right. So it is not the Mackiewicz
12 hard drive taken from Chief Knight's office; it is the material
13 previously provided by plaintiffs.

14 CHIEF MARTINEZ: Yes, sir.

15 THE COURT: I'm sorry, by defendants.

16 CHIEF MARTINEZ: The chief -- I'm sorry, Your Honor.
17 The Chief Knight slash Mackiewicz hard drive is in the process
18 of being forensically copied. They haven't finished doing the
19 copying yet because it takes many hours, and that still has not
20 been fully copied yet.

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21 Status Conference 8-11-15.txt
22 THE COURT: All right. So you've already reviewed
23 this material.
24 MS. IAFRATE: I am not concerned, if that is indeed
25 the hard drive that was copied. I was under the impression
that it was the one that was seized from Chief Knight's office.
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 35

1 THE COURT: All right. So you can go ahead and review
2 everything you've got.

3 MR. GOMEZ: Yes, Your Honor.

4 THE COURT: But that does leave sort of the elephant
5 in the room about what do you want to -- I mean, the only
6 reason -- well, let me restate what appears to be the state of
7 things at this moment, and I can't say it is the state of
8 things because things are still in flux. But it appears, based
9 on documents that we have seen, that MCSO actually took
10 possession of 50 hard drives provided to them by
11 Mr. Montgomery, which he represented to be CIA-harvested
12 material.

13 Those 50 hard drives were brought here to Maricopa
14 County and placed in an evidence locker. We don't have
15 absolute confirmation that the 50 hard drives we have seized
16 are those hard drives, but it appears that that, at least for
17 present purposes, is not contested.

18 The reason why you're involved at all, of course, is
19 because Ms. Iafrate contacted you and said that MCSO had this
20 material that had been represented to them as having been taken
21 from the CIA. And if that is true with respect to the one
22 hard drive that you now have, it may also be true with respect
23 to the 50 hard drives that we now have.

24 We also have documents, but they are only documents,
25 which purport to be communications between members of the MCSO

Status Conference 8-11-15.txt

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 36

1 and Mr. Montgomery in which the MCSO expresses severe doubts
2 about the credibility of what Mr. Montgomery told them about
3 the contents of those hard drives. So I can't represent to you
4 that those 50 hard drives in fact have CIA-harvested material
5 on them, but, of course, I can't represent to you that they
6 don't.

7 But I can say that I don't intend to wait for this
8 lawsuit for the Department of Justice to decide whether or not
9 it's going to review those 50 hard drives, and if they've got
10 secure material on them, they've got secure material on them,
11 but I'm going to make them available to the plaintiffs and to
12 the defendants if they want to review the material on that
13 hard drive.

14 And I understand your concern about not, you know,
15 altering the metadata that's on those hard drives, and I don't
16 know computer stuff, but I do understand that we can make ghost
17 copies of those existing hard drives and make them available to
18 both parties, or all parties who may want to look at them, so
19 that we can establish whether in fact those are the materials
20 provided by Mr. Montgomery to the MCSO, and if in fact they
21 contain what Mr. Montgomery purported to the MCSO that they
22 contained.

23 It may be, as I said last time, that the parties may
24 be able to stipulate that those are the -- for example, that
25 those are the materials provided by Montgomery to the MCSO, and

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 37

1 that they don't seem to contain the material that Montgomery
2 indicated that they did. But I don't know that the parties can

Status Conference 8-11-15.txt

3 stipulate to that, or that they will care to.

4 And if you have a concern that you have -- that there
5 is secured material on them, we want to accommodate that
6 concern. But we're not going to sit here while you decide, you
7 know, for months while you decide whether or not you're going
8 to look at them.

9 Do you understand what I'm saying?

10 MR. GOMEZ: I understand, Your Honor.

11 THE COURT: So how do you propose that we proceed?

12 MR. GOMEZ: Well, the client entities that I'm
13 speaking to, you know, from the United States, have expressly,
14 and reaffirmed yesterday, that they want to take this one step
15 at a time and look at the two Banker Boxes and the one
16 hard drive, and if there's material on there, make a
17 determination of how best to proceed.

18 Those are my instructions from the client.

19 THE COURT: All right. Well, would you please tell
20 your client entities that I have no intention of waiting on
21 their decision to proceed or not to proceed.

22 MR. GOMEZ: Yes, Your Honor.

23 THE COURT: That we are going to go forward. That we
24 will, of course, accommodate the United States Government to
25 the extent that they have reasonable concerns that there may be
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 38

1 material on there that needs to be protected, but that doesn't
2 mean we're just going to sit here.

3 MR. GOMEZ: Yes, Your Honor.

4 THE COURT: All right. You can stay right there,
5 because Mr. Masterson has something he wants to say.

6 MR. MASTERSON: Just a question, Judge: Do we get to
7 know who these client entities are, or is that top secret for

Status Conference 8-11-15.txt

8 some reason?

9 THE COURT: I don't see why you can't know who those
10 client entities are.

11 MR. GOMEZ: If there is classified information in the
12 material, then it would be -- we would not be able to identify
13 the entity or entities, so at this point we -- until we look at
14 the material, if in fact the material is of the nature where an
15 entity can't be identified because it's classified, then we
16 can't disclose, at least at this point --

17 THE COURT: And what law are you basing that on?

18 MR. GOMEZ: Well, based on the -- if the material is
19 in fact classified and the information as to the, you know,
20 executive order, I at the moment have -- I think it's 12386,
21 but I'll have to confirm the actual number, if the entity can't
22 be identified because it's classified, then along with the
23 other substantive material it, by executive order, is precluded
24 from disclosure.

25 THE COURT: Well, I guess I'm not going to make you
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 39

1 disclose that today, but an executive order I'm not sure binds
2 this Court. We'll see.

3 MR. GOMEZ: Yes, Your Honor.

4 THE COURT: The other thing that I guess I want to
5 know is: Do your client entities have any idea how long it's
6 going to be before they get back to us whether they think
7 they've got any secured material in that material they're
8 reviewing?

9 MR. GOMEZ: I haven't been given a time line, but I've
10 expressed to them that, you know, the proceeding -- this case
11 is proceeding forward, and there are, in fact, at least as I

Status Conference 8-11-15.txt

12 understand it, matters that are going forward as early as
13 September 22nd, and that there's not much time --

14 THE COURT: well, let me just say, it is going forward
15 on September 22nd.

16 MR. GOMEZ: Yes, Your Honor.

17 THE COURT: And let me also just say, and maybe we can
18 shortcut this, to the extent that you're only reviewing what
19 the defendants have already provided in April, I have the sense
20 that it has been thoroughly reviewed already by plaintiffs and
21 defendants. Do any of you want to characterize --

22 MS. IAFRATE, you may have the best view of any of
23 this. Is there anything in there that you think may be secured
24 material?

25 MS. IAFRATE: Your Honor, I don't feel confident to
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 40

1 determine what's confidential and what's not confidential
2 information.

3 THE COURT: Have you reviewed it all?

4 MS. IAFRATE: I have.

5 THE COURT: Ms. Wang, have you reviewed it all?

6 MS. WANG: I have not personally, but our team has, I
7 believe.

8 THE COURT: Okay. well, you can tell the United
9 States Government, then, and whatever entities they are,
10 they're well behind the eight ball in reviewing what this
11 material is. And so again, I'm glad to accommodate national
12 security interests, if there are any, but I think we need to
13 move forward.

14 MR. GOMEZ: Yes, Your Honor.

15 THE COURT: Okay. Now, with respect to the 50
16 hard drives, Ms. Iafate, Mr. Masterson, Ms. Wang, do you want

Status Conference 8-11-15.txt

17 access to those now, or do you want to give the United States a
18 little bit of time? I mean, you've had them for many, many
19 months, or years, but I don't know whether they're the topic of
20 a current investigation from MCSO or any other Arizona or
21 national law enforcement that you would have provided access to
22 for --

23 MS. IAFRATE: Your Honor, we would like access to
24 them, and I think that waiting until the eve of the next trial
25 would not be prudent --

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 41

1 THE COURT: Yeah, I have no intention of doing that.
2 why don't we do this? Ms. Wang, let me hear from you.

3 MS. WANG: Yes, Your Honor. Plaintiffs also would
4 like to have access. It seems like a large volume of material
5 to review, and so the sooner the better, in our view.

6 THE COURT: In addition with your discussion about the
7 1500 identifications, why don't you discuss with the monitor
8 protocols for accessing the 50 hard drives that -- and we can
9 see if we can limit any disruption of metadata or anything else
10 that may be on those hard drives, if we can agree to a
11 procedure, and then let me know next status conference or
12 before and we can enter an order to provide access.

13 MS. IAFRATE: Your Honor, that would be fine, and we'd
14 be willing to work with plaintiffs and the monitor.

15 The one other hard drive that was seized from
16 Chief knight, what protocol should I follow? Should I file
17 something with the Court in order to obtain access to that one
18 to make a copy?

19 THE COURT: Well, Chief Martinez, did you say that the
20 monitor is already making a forensic copy?

Status Conference 8-11-15.txt

21 CHIEF MARTINEZ: Yes, Your Honor, and it should be
22 finalized later on today. It took, like, 90 hours to copy.

23 THE COURT: Okay. Why don't you do this? Why don't
24 we make another copy, or maybe two copies of that copy, and
25 give one of the copies to Ms. Iafrate.

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 42

1 And then, Chief, I'm going to ask you, I'm going to
2 require Ms. Iafrate to review it promptly, but I'm going to ask
3 you not to review your forensic copy until we've given
4 Ms. Iafrate a chance to characterize, or at least attempt --
5 give you a chance to say what is on there that doesn't relate
6 in any way to the Montgomery matter.

7 CHIEF MARTINEZ: Yes, sir.

8 THE COURT: All right. Does that work, Ms. Iafrate?

9 MS. IAFRATE: Thank you.

10 THE COURT: Any objection with respect to that,
11 Ms. Wang?

12 MS. WANG: Your Honor, I just have one question. We
13 have no clue what other material is unrelated to the Montgomery
14 issue, but I don't know whether any of the other contents of
15 the hard drive that fall into that category might be relevant
16 to this case or to the rights of the plaintiff class.

17 THE COURT: Well, why don't we have, then,
18 Ms. Iafrate, you can do a privilege log with respect to
19 material that you think should be withheld, which you can
20 describe that material sufficient for plaintiffs to know what
21 it is.

22 Will that work?

23 MS. IAFRATE: That will work.

24 THE COURT: All right. Thank you.

25 Ms. Iafrate filed this morning a document, a Notice to
Page 36

Status Conference 8-11-15.txt

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 43

1 the Court Regarding Documents Provided Pursuant to Court's
2 Orders. I don't know if you've had a chance to look at that,
3 Ms. Wang.

4 MS. WANG: I looked at it in a very cursory way on
5 Mr. Bendor's cell phone before we walked into court this
6 morning, Your Honor. I believe that that comports with our
7 understanding of what's been produced.

8 More broadly, I did confer with Ms. Iafrate about some
9 of the document productions that have not been made. She
10 assures me that the hard drive containing the press interviews
11 or press conferences given by Sheriff Arpaio is on its way to
12 plaintiffs. That was a bit late, but that's all right; I'm
13 assured it's on its way.

14 And there were two other issues where documents have
15 not been produced yet. I don't know if the Court wants --

16 THE COURT: And what are those?

17 MS. WANG: -- to hear about that.

18 THE COURT: Yes.

19 MS. WANG: The first, Your Honor, is the
20 identifications that were found in the training kit used by
21 Sergeant Marshall and identified by Lieutenant Kratzer. This
22 was a separate set of IDs. Ms. Iafrate informs me that she
23 does not have those, either, and that those are among the
24 documents that were taken into custody by the U.S. Marshals.
25 Plaintiffs would like get a copy of those.

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 44

1 And then secondly is the issue of the ongoing
2 internal -- criminal Internal Affairs investigation. That is

Status Conference 8-11-15.txt

3 obviously still in dispute between the parties.

4 THE COURT: I thought that you'd provided that
5 material to the monitor.

6 MS. IAFRATE: I did provide it to the monitor.

7 THE COURT: All right. And you didn't provide it in
8 the general box that would give it to all parties?

9 MS. IAFRATE: No.

10 THE COURT: All right. We'll address that, then,
11 maybe, in conjunction with some other things in a little -- in
12 a minute. Don't let me forget that, Ms. Wang.

13 MS. WANG: Yes, Your Honor.

14 THE COURT: Chief Martinez, it was my understanding, I
15 think, and I think you were the one that had the concern about
16 the Kratzer IDs, but didn't you confirm for me that the Kratzer
17 IDs were within the materials that MCSO provided to the
18 marshals in response to this Court's order and had been
19 separately identified?

20 CHIEF MARTINEZ: Your Honor, you're correct. The
21 Kratzer IDs, you know, better known as the Sergeant Marshall's
22 42 IDs in a training kit, we received photostatic copies of
23 those forty-some IDs.

24 we still do not have copies of another instance that
25 we were briefed by PSB on July 20th of about 40 IDs that

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 45

1 Chief Warshaw testified in the court hearing of the 24th that
2 were seized -- that were identified by a Deputy Dickner -- and
3 I may be mispronouncing his name -- from Lake Patrol.

4 There's another instance of 20 to 25 shredded IDs, and
5 MCSO did provide to the U.S. Marshal a baggie full of 20, maybe
6 25 shredded IDs, and we have a picture of a baggie full of
7 shredded IDs.

Status Conference 8-11-15.txt

8 THE COURT: All right. So the 20 to 25 shredded IDs
9 are in the custody of the marshal, is that correct?

10 CHIEF MARTINEZ: Yes, sir.

11 THE COURT: Agent Hershey, you remember --

12 CHIEF MARTINEZ: Yes.

13 THE COURT: -- shredded IDs?

14 DEPUTY U.S. MARSHAL HERSHEY: That is, Your Honor.

15 THE COURT: All right. So we have the shredded IDs;
16 we have the Kratzer IDs; what we're not sure we have is the
17 Dickner IDs?

18 CHIEF MARTINEZ: Yes, Your Honor. And we were briefed
19 on that on the 24th, and they came from -- it's about 40 of
20 them came from Lake Patrol.

21 THE COURT: Forty from Lake Patrol, and there are 44
22 IDs?

23 CHIEF MARTINEZ: Four zero, Your Honor, 40.

24 THE COURT: All right. Four zero.

25 All right. I'm going to ask you to follow up with
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 46

1 Ms. Iafrate, or whoever it is that you've been following up, to
2 make sure that we get those identifications disclosed, or have
3 them accounted for.

4 MS. IAFRATE: Your Honor, was there a date on which
5 those were requested? Because I'm trying to find the request
6 and further identify what exactly it is that we're talking
7 about.

8 THE COURT: Well, let me just say, Ms. Iafrate, and
9 I'm sorry if I seem a little impatient, I don't mean to be, but
10 I don't care what the monitor's request was. I entered a
11 discovery order back in February that all identifications

Status Conference 8-11-15.txt

12 involving potential members of the plaintiffs' class were to be
13 disclosed.

14 And so I will certainly have the monitor identify the
15 request, but I want to make it clear now, as I have made it
16 clear a number of times, if you find identifications that
17 belong, or may belong, to members of the plaintiffs' class, you
18 must disclose them.

19 MS. IAFRATE: I understand that, Your Honor. I'm
20 trying to get the request of the monitor answered in a timely
21 fashion, and if I knew when they requested it, I could go back
22 and look at the request to find exactly --

23 THE COURT: Well, I'll have him -- I'll have Chief
24 contact you after the hearing and give you that number.

25 MS. IAFRATE: Thank you.

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 47

1 THE COURT: Anything else that needs to be discussed
2 with respect to the documents?

3 MS. WANG: Your Honor, to be clear, may plaintiffs
4 have a copy of all of the identification documents just
5 discussed?

6 THE COURT: Yes.

7 MS. WANG: Thank you.

8 THE COURT: But it will be one of the things that I
9 think -- most of those documents, as far as I can tell, are in
10 the custody of the marshal. And I think it's reasonable to
11 have both parties have complete copies of those documents. But
12 why don't you discuss that in conjunction with your other
13 discussion of those materials.

14 Now, one of the reasons why we're having virtually
15 weekly status conferences is I don't want to get up to the end
16 of September and then have all this discovery that hasn't been

Status Conference 8-11-15.txt

17 provided, or have all these deposition requests that cannot be
18 accommodated. And so I would ask you, Ms. Wang, and I don't
19 know if you know already, what depositions you want, and who
20 you want to depose.

21 MS. WANG: Your Honor, we have some idea, I can't say
22 that we have decided for final purposes, but we may take the
23 depositions of all the named contemnors. Given the withheld
24 documents and now the productions of those documents, we may
25 seek to reopen any of those depositions. Similarly, we may

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 48

1 seek to reopen the depositions of anyone we've previously
2 deposed.

3 of the new witnesses we may depose, we have in mind
4 potentially Tim Casey, Tom Liddy, Christine Stutz, Steve
5 Bailey, Sergeant Tennyson, Detective Mackiewicz, Detective
6 Anglin, Mr. Zullo, and Mr. Vogel. That's who I have in mind
7 right now as our potential universe. Of course, we may add
8 additional witnesses, or we may not depose all the ones I've
9 just listed.

10 THE COURT: All right. Thank you.

11 Mr. Masterson, do you have people you wish to depose?
12 That you have yet identified.

13 MR. MASTERSON: Not yet, Judge, I do not.

14 Now, there are some people that, depending upon where
15 we head in discovery, that we may want to depose. And I will
16 alert the Court now that some of those people may well be the
17 monitors.

18 THE COURT: well, I understand that, that that may be
19 the case. I do think that there are issues of judicial
20 privilege with the monitors that we need to be careful about,

Status Conference 8-11-15.txt

21 but it also seems to me that in terms of some of the things
22 that I've asked the monitors to do, like evaluate the adequacy
23 of your department's investigation, it seems to me that you may
24 well be entitled to make such inquiries, and so I understand if
25 that's what you want to do.

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CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 49

1 MR. MASTERSON: But at this point I can't identify any
2 further specific witnesses we may want to depose.

3 THE COURT: All right. And I'm going to take this up
4 again in a minute with respect to what Mr. Masterson raised he
5 wanted to discuss -- raised last week he wanted to discuss this
6 week, but let me just suggest that -- well, I'll get there when
7 I get there.

8 Chief Sands has requested to be excused from all
9 future status conferences. If nobody objects, I'm going to
10 allow him to be excused. Clearly, Sheriff Arpaio is a
11 contemnor, Chief Deputy Sheridan, aren't here. They don't come
12 and I haven't required them to be here.

13 I appreciate, Chief MacIntyre, that you're here;
14 Lieutenant Sousa, you're here. If you want to be excused,
15 unless a party objects, you can be excused as well. But if I
16 see a reason to have you present during a status conference I
17 will inform you.

18 Does anybody have any objection, any party or nonparty
19 have any objection? All right.

20 I understand, Chief Martinez, that although the
21 interviews of Deputy Mackiewicz and -- I don't know, Mike Zullo
22 is the head of the Cold Case Posse. I don't know if he has a
23 title other than that, whether he has a rank or anything --
24 that they had their interviews scheduled last week by the
25 monitor and declined to be interviewed.

Status Conference 8-11-15.txt

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 50

1 Can you give me any insight into that?

2 CHIEF MARTINEZ: Yes, Your Honor. We had both their
3 names on the list of members to be interviewed. They did show
4 up under orders by command staff by MCSO. Deputy Mackiewicz
5 showed up with his own private counsel, an attorney by the last
6 name of Nash, and she instructed Detective Mackiewicz not to
7 respond to any questions, because there were no protections for
8 Deputy Mackiewicz -- or Detective Mackiewicz, I apologize, and
9 that there was an open investigation by the Maricopa County
10 Sheriff's Office. That happened last Friday, the 7th, probably
11 1:00 p.m. in the afternoon.

12 Cold Case Posse, I think they call him "Commander,"
13 but I can't swear that's his actual title within the Posse rank
14 structure, did show up on Friday in the morning. He advised us
15 that he had been made aware since Monday night if I decided to
16 interview him, that he had been trying to acquire counsel since
17 then but had not been able to, and that he would communicate to
18 us through attorney Popolizio as to when he acquires counsel
19 and when he's ready to be interviewed.

20 THE COURT: Do you have any update for us,
21 Mr. Popolizio?

22 MR. POPOLIZIO: I do not, Your Honor.

23 THE COURT: Okay. You haven't heard from
24 Commander Zullo at all.

25 MR. POPOLIZIO: No, I have not, and certainly not with
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 51

1 regard to whether he has retained counsel.

2 THE COURT: Okay.

Status Conference 8-11-15.txt

3 MR. POPOLIZIO: Your Honor, just to clarify, he did
4 also tell the monitors and everyone else present that he was,
5 of course, trying to retain counsel, and thought he had but
6 somebody, whomever he talked to, had a conflict.

7 THE COURT: Okay. Last -- was it Friday? --
8 Mr. Masterson, you raised the issue of the monitor's
9 interviews, and I indicated that you had the right to depose
10 whoever you wanted, and I wanted the monitor's interviews to be
11 the monitor's interviews. But I did say I would more fully
12 discuss that with you this week, today, to make sure I
13 understood your request, and see what we could do that might
14 address your concern, so if you want to raise that matter.

15 If I can just say and sort of reset the setting, and
16 if I misstate, you can correct me, but I think you said, Look,
17 Judge, you know, these monitor interviews, you're going to be
18 using them in the contempt hearing, and they may be used for
19 other purposes later, and so I think you said that you wanted
20 to be able to participate by actually doing questioning in the
21 interviews.

22 And Mr. Popolizio raised some concerns about how
23 documents were used in the interview, and I went back and
24 talked to the monitor, and he said, Look. They don't know,
25 because documents are identified in interviews to them. But

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 52

1 when they have a document, they always identify it by Bates
2 number, they always allow the witness to take whatever time he
3 wants to review it, and counsel in the room to review it. And
4 if you find instances where that's not true that you think have
5 caused concern, you can raise them to my attention, but that's
6 how the monitors intend to proceed.

7 As I thought about it, I do -- you know, the

Status Conference 8-11-15.txt

8 interviews themselves, from my perspective, were designed to
9 weed out issues and to identify issues, and also for the
10 monitor to conduct his -- his task, which was in part to
11 evaluate the adequacy and effectiveness of MCSO's
12 self-interview process, and determine whether other matters
13 were being not raised that should have been raised, or
14 inappropriately dealt with. And also there was -- I gave him
15 authority to inquire about the Montgomery investigation,
16 matters related to that.

17 Obviously, those interviews can't be introduced into
18 evidence, and I didn't presume that that's what you were
19 saying. They probably could be used as statements that -- I
20 mean, to the extent that somebody testified inconsistently with
21 what they said in their interview, I suppose they could be used
22 as prior inconsistent statements. But I really did authorize
23 both you and all specially appearing counsel to be there to
24 make sure that their clients' interests were protected in those
25 interviews, and my monitor says that you've been active.

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 53

1 Let me tell you what I would propose, though, and see
2 if it will meet your concerns. I understand your desire to
3 actively and vigorously represent your client. One of the
4 reasons I asked, frankly, Ms. Wang to tell me who she intended
5 to depose was because I've spoken with the monitor about how we
6 could accommodate your concerns of being able to question
7 during these question processes to say that your -- to be able
8 to more vigorously represent the interests of your client. And
9 I reviewed with him whether he thought it would be possible --
10 and, of course, he has no participation in a deposition -- but
11 whether it would be possible to just allow Ms. Wang or the ACLU

Status Conference 8-11-15.txt

12 to depose those people they want to depose, and obviously you
13 can question in those depositions if you wish to do so. And if
14 Ms. Wang covers all the ground he was going to cover anyway,
15 then he has no need to do his investigation. I should say
16 Ms. Wang, or you, or anybody else who might participate, then
17 he has no need to repeat his investigation, and that might more
18 readily meet your concerns.

19 And if he did have issues relating to his evaluations
20 of the adequacy, for example, of an investigation, that he felt
21 like Ms. Wang or nobody else covered, then he would raise it
22 with me to conduct a follow-up investigation, but again, you
23 would be allowed to participate as you have been.

24 would that largely address your concerns?

25 MR. MASTERSON: The deposition process certainly would
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 54

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1 address my concerns, because my concern with respect to the
2 interview process is fundamental, and it relates to due
3 process --

4 THE COURT: Well, you can make whatever arguments you
5 want to make on that.

6 MR. MASTERSON: Well, Judge, the problem I have is if
7 the Court intends to use information learned from the monitors
8 during interviews, the people interviewed and my clients were
9 not adequately represented at the interviews.

10 THE COURT: Well, I don't know how I could use it.
11 How could I use it? The only purpose was, as I mentioned last
12 week, that maybe with the interview process, the parties could
13 stipulate to facts. But I'm not assuming the truth of anything
14 that's said in an interview and it's not independently
15 admissible in evidence. So I understand your con -- I mean,
16 your desire to be especially proactive in your concerns about

Status Conference 8-11-15.txt

17 your client, but how could I use that information?

18 And I will say, Ms. Masterson -- Mr. Masterson, that,
19 you know, I am roughly aware of who's being interviewed, and
20 roughly aware of the topics of the interview, because I have
21 the obligation under the order to supervise the monitor's work.
22 But I haven't read any of the interviews, and I haven't assumed
23 the truth of anything in the interviews. I know that some
24 things have been said, and I suspect that Ms. Wang is going to
25 want to have transcripts of the interviews, and everybody else,
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 55

1 before they do depositions, but I don't have any intention to
2 use the information in the interview other than in those
3 settings.

4 And as I said, the only other way I could think it
5 might come up is if somebody testifies here in court and they
6 make a statement that is inconsistent with a prior statement
7 they made in an interview, then that might come up. But that's
8 the only -- I don't intend to use the interviews for that
9 purpose.

10 The monitor, of course, is doing the interviews in
11 part to determine the internal investigative processes that
12 have been going on at MCSO and to evaluate them, as well as to
13 determine whether or not they've been adequate, whether or not
14 other areas need to be investigated, but frankly, your client
15 consented to that long ago, and I don't know that you can
16 revisit that now.

17 And again, I understand your desire to adequately and
18 vigorously represent your client, but I'm not going to use that
19 information in court, and I am not going to read it like you
20 parties are unless it's brought to my attention. And I'm not

Status Conference 8-11-15.txt

21 assuming the truth of anything otherwise that I hear, and any
22 concerns I have I raise openly to all parties so they can
23 address them.

24 MR. MASTERSON: I guess I'm having a difficult time
25 understanding why we went through a very expensive process of
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 56

1 conducting these interviews if the Court doesn't intend to rely
2 on them for any purpose. Depositions --

3 THE COURT: Well, I intend to have you rely on them to
4 determine what is evidence and what is not evidence; what can
5 be eliminated from this lawsuit and what is relevant. And I
6 think it was actually -- and, of course, I may be wrong, as I
7 may be on many things -- but I think it was actually a far more
8 cost-effective way to eliminate issues that may not relate to
9 this lawsuit at all, to the extent that you intend to use them
10 wisely, in conjunction with plaintiffs, to stipulate to some
11 issues that no one contests, to stipulate to other issues that
12 may not relate to this lawsuit at all, and then to identify and
13 narrow the issues.

14 MR. MASTERSON: The Court also raised another concern
15 of mine in the interview arena, and that is -- that is what
16 appear to be ex-parte communications between the monitors and
17 the Court about the interviews. And it came to light
18 specifically in my mind when the Court made inquiry last Friday
19 of Mr. Popolizio to certain questions and answers given by
20 Chief Sheridan during his interview. Ex parte communications
21 between the monitor with respect to interviews concerns me a
22 great deal with respect to protecting my client's due process
23 rights.

24 THE COURT: Well, as I said, if anything gets raised,
25 and it was raised to me right before court in concern of --

Status Conference 8-11-15.txt

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 57

1 related to the concern to the extent that you might have been
2 obstructing the ability of the monitor to conduct an effective
3 interview, and the way I dealt with that is I raised it
4 immediately with you. And I do have the obligation, under both
5 injunctions, to supervise the monitor in his work. And I think
6 I -- I don't know how to do that without having some
7 communication with the monitor.

8 And so you've preserved the issue to the extent that
9 you believe it is a problem, but I think it's clear that I have
10 the obligation to supervise the monitor in his work. I've
11 tried to do that in a way so that if there's ever any issue, I
12 raise it with you directly and immediately. I haven't assumed
13 the truth of anything my monitor says or anything that any
14 party says, but I've raised with you to allow you to address
15 it. And I don't know how else to proceed, in light of the very
16 unusual situation in which we are placed, and in light of the
17 contempt hearing, and in light of all of the evidence that has
18 been destroyed and apparently conceal -- possibly concealed,
19 about which I'm going to allow you a full opportunity to be
20 heard.

21 But you have preserved it for the record. Is there
22 anything else you'd like to say on it?

23 MR. MASTERSON: Well, yes. And I think possibly the
24 Court's suggestion with respect to depositions in lieu of
25 interviews might remedy this situation. It certainly doesn't

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 58

1 fix what happened in the past but it would remedy the situation
2 going forward, is that I do have a problem with the monitor's

Status Conference 8-11-15.txt

3 investigations overall. It seems to me it's gone, to a large
4 extent, from a general fishing expedition to a specific
5 inquisition in certain areas. And the Court has been asked to
6 limit the authority of the monitor and specifically refused to
7 limit the authority of the monitor.

8 THE COURT: Well, that's, in my view, a misstatement
9 of the record. I realize that you said that in your recusal
10 motion, but I think that I was very clear to Ms. Iafrate at the
11 time that if she had objections that the monitor's questioning
12 was going beyond the scope of this lawsuit, that she could
13 terminate the investigation and bring those to me. I think I
14 was very clear about that.

15 MR. MASTERSON: Okay. And here let's go back to the
16 interviews for a second, because the Court just raised a
17 question about defense counsel obstructing an interview. Well,
18 my under --

19 THE COURT: Well --

20 MR. MASTERSON: My understanding is that the
21 interviews are not compelled; they're voluntary.

22 THE COURT: That's true.

23 MR. MASTERSON: So the witness can walk out at any
24 time, not answer --

25 THE COURT: That is true.

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 59

1 MR. MASTERSON: -- any question for any reason.

2 THE COURT: That is true.

3 MR. MASTERSON: So I'm not certain how defense counsel
4 can obstruct an interview --

5 THE COURT: Well --

6 MR. MASTERSON: -- under those circumstances.

7 THE COURT: -- you know, it was my choice of terms.
Page 50

Status Conference 8-11-15.txt

8 The monitor just was concerned that defense counsel were
9 inserting themselves in the interview in a way that prevented
10 him from doing what he felt like he needed to do.

11 I think you're absolutely right: If the witnesses
12 want to go up and leave the interview, they can, except the
13 monitor is compelled to have access under my orders, and I
14 would then determine what I was going to do about it. But I
15 made it clear to Ms. Iafrate initially that if she wanted to
16 terminate an interview because she had a problem and bring it
17 before the Court, I would rule on it right away.

18 MR. MASTERSON: You did, Judge, and it was the May
19 14th discussion that you had with Ms. Iafrate, and she asked
20 for some limitation on the monitor's authority and the Court
21 did not do that. And the specific issue --

22 THE COURT: Well, I believe I did do that. I said it
23 has to relate to the members of the plaintiff class in this
24 lawsuit, and if you have a problem and think it doesn't, bring
25 it before me.

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 60

1 MR. MASTERSON: Well, what we asked for was
2 notification of issues that the monitor's going to be looking
3 at, so we're not sitting there while the monitor runs rampant
4 over the rights of our clients during interviews or any other
5 investigations.

6 THE COURT: Well, I mean, to the extent -- again, I
7 haven't read the interviews; I don't know what's in them; I'm
8 not assuming the truth of anything that's in them. To the
9 extent that you believe you have a basis to object in any part
10 of the hearing that happens that would involve the use of the
11 interviews, you're welcome to make that objection.

Status Conference 8-11-15.txt

12 MR. MASTERSON: Okay, Judge. I think I've covered
13 what I needed to cover.

14 THE COURT: Anything else?

15 MR. MASTERSON: Not right now.

16 THE COURT: Let me see if I --

17 Ms. Wang, do you have anything you want to say?

18 MS. WANG: No, Your Honor.

19 THE COURT: Let me see if I've covered what I need to
20 cover.

21 Ms. Iafrate, you were going to research whether Lisa
22 Allen's quote in the New Times article was in fact given by
23 Lisa Allen.

24 MS. IAFRATE: It was.

25 THE COURT: It was?

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 61

1 MS. IAFRATE: It was.

2 THE COURT: Is there any reason why, then, I have to
3 leave under seal anything that took place in the last -- in the
4 meeting of last Friday or the week before?

5 MS. IAFRATE: Your Honor, I would just re-urge the
6 same arguments that I made previously that despite the target
7 is aware of a pending criminal investigation, that the target
8 is not aware of the extent or the issues. Therefore, I would
9 ask that you keep not only the two hearings under seal, but
10 also I have provided that investigation to the monitors only.
11 I would ask that it be just with the monitors only and to not
12 provide it to the plaintiffs until the investigation is
13 completed.

14 THE COURT: Well, there was no discussion, as I
15 recall, to the extent of any investigation in these court
16 hearings, was there?

Status Conference 8-11-15.txt

17 MS. IAFRATE: Yes, there was.

18 THE COURT: Do you want to identify that for me at
19 sidebar? well, not at sidebar, because that's still in the
20 hearing, but we'll go under seal and you can identify for me in
21 those court hearings to what extent the extent of any
22 investigation was identified in the court hearings. I don't
23 believe it was.

24 MS. IAFRATE: You're talking about the issues?

25 THE COURT: Yes.

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 62

1 MS. IAFRATE: No, I spoke in broad terms regarding the
2 investigation.

3 THE COURT: Okay. So as it pertains to the court
4 hearings, why can't the seal be lifted on those court hearings?

5 MS. IAFRATE: Your Honor, I would just re-urge what I
6 had argued before, that to tie not only the investigation to
7 target, and now the investigation that has been provided to the
8 monitors, we don't want to compromise an ongoing criminal
9 investigation.

10 THE COURT: All right. well, I'm going to unseal the
11 court hearings, to the extent they were sealed last week and
12 the week before, because there wasn't any specification of any
13 topic of investigation in those hearings discussed. And the
14 MCSO itself has indicated that the subject was the target of an
15 internal criminal investigation, which was the material that
16 you initially stated you wished to protect and why you asked
17 for this hearing to go under seal, and so seeing as you have
18 now disclosed that, I'm going to lift the seal on those court
19 hearings.

20 with respect to the internal investigation materials

Status Conference 8-11-15.txt

21 which you have provided to the monitor, it does seem to me that
22 to the extent that those are relevant to the plaintiff class's
23 damages and remedies, the plaintiff class has to know about
24 them. But there may not be relevant information there, and I
25 don't know how you want me to evaluate that without having a
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 63

1 court hearing about it.

2 And I don't know how I can have a court hearing where
3 I consider that unless plaintiffs are given access to that
4 material and then we have a closed court hearing. But the
5 plaintiffs would be under the same obligation as is the
6 monitor, which is they are to reveal that information to no one
7 at all.

8 Do you have any other recommendation about how I
9 proceed? I certainly -- especially in light of the concerns
10 that Mr. Masterson has just said about wanting to be sure that
11 his client isn't prejudiced by any inappropriate ex parte
12 communication between me and the monitor. I don't see how I
13 can get any sort of evaluation of whether or not that is
14 relevant material unless I let the plaintiffs and the other
15 parties see that material but place them under the order that
16 they are to disclose it to no one.

17 MS. IAFRATE: Well, Your Honor, that would defeat the
18 purpose of provi- -- if we provide it to them, then they have
19 access to it. So I would ask that the procedure be that I
20 review the investigation and make a determination regarding
21 relevance, and if it's relevant, then it will be disclosed; and
22 if it's not relevant, then I would do some sort of log
23 regarding how you would go about normal discovery.

24 THE COURT: And so you would ask for the right to
25 represent the plaintiffs' class interests in evaluating the

Status Conference 8-11-15.txt

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 64

1 relevance of the material?

2 MS. IAFRATE: No, I would ask that I represent my
3 clients' interests in determining the relevance of the
4 material.

5 THE COURT: Which is precisely what you should do, and
6 Ms. Wang has to represent the interests of the plaintiff class.
7 Do you want to be heard on this, Ms. Wang?

8 MS. WANG: Yes, Your Honor.

9 Plaintiffs do seek disclosure of those documents, and
10 we will, of course, submit to any protective order that the
11 Court issues, and would be happy to meet with Ms. Iafrate, for
12 that matter, to work out the details of such protective order.

13 Ms. Iafrate just suggested that it would be a typical
14 process for her to conduct a review for relevance. Obviously,
15 that's not true. Counsel can do a review for privilege issues,
16 but certainly plaintiffs would not agree to have defense
17 counsel try to determine what's relevant in this context.

18 Based on what we know already, having observed many of
19 the monitor's interviews, we believe that there's every
20 indication that there is very relevant material in these
21 documents that we're discussing.

22 THE COURT: All right. Then I'm going to request --
23 I'm going to order that you try to work out the terms of a
24 protective order with the plaintiffs pursuant to which you and
25 other separately represented parties will be given access to

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 65

1 this material, and you bring it before me at the next status
2 conference if you can or cannot agree, and we'll deal with it

Status Conference 8-11-15.txt

3 at that time.

4 MS. WANG: Yes, Your Honor.

5 THE COURT: Anything else?

6 MS. WANG: Your Honor, you reminded me to -- oh, never
7 mind. That was the thing you asked me to remind you about.

8 THE COURT: All right.

9 MS. WANG: Your Honor, there is one other issue, if I
10 could ask the Court's indulgence. We see that the Court has
11 not yet issued an order on the issue of the amendment to the
12 supplemental injunction on remand from the Ninth Circuit.

13 THE COURT: Um-hum.

14 MS. WANG: We did argue that last week. I neglected
15 to make one point. If I could ask the Court's permission just
16 to make that briefly --

17 THE COURT: All right.

18 MS. WANG: -- I would appreciate the opportunity.

19 THE COURT: I will allow, of course, the other side to
20 respond.

21 MS. WANG: Okay.

22 THE COURT: And whoever's got your cell phone on and
23 is getting an alert, please turn it off.

24 MS. WANG: Thank you, Your Honor.

25 Last week I addressed the issue of why we have

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 66

1 proposed that the language not be limited to constitutional
2 violations, but also encompass violations of MCSO policy and
3 procedure. The new issue --

4 THE COURT: I think Ms. Iafrate agreed with that.

5 MS. WANG: Right. The new issue, Your Honor, and it's
6 not an issue but an argument, is that I wanted to point out
7 that the language we proposed for the amended provision

Status Conference 8-11-15.txt

8 included issues related to discriminatory policing, unlawful
9 detentions and arrests, immigration enforcement, or violations
10 of the 4th and 14th Amendments to U.S. Constitution.

11 I merely wanted to point out, Your Honor, that the
12 Ninth Circuit specifically affirmed similar language in a
13 separate paragraph, subparagraph G of 136, where the court had
14 ordered that the monitor have the ability to look into civilian
15 complaints regarding biased policing or unlawful detentions and
16 arrests.

17 The point here, Your Honor, just to sum up, is that
18 there may be unlawful detentions that are not specifically
19 related to discriminatory policing as it's defined in the
20 Court's order. For example, the Court's preliminary
21 injunction, which was repeated in the permanent injunction, was
22 that MCSO deputies not detain people based solely on suspicion
23 that a person is illegally in the United States. Such
24 detention may not have anything to do with race discrimination,
25 but we contend that that should be within the monitor's ability
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 67

1 to look into complaints from civilians.

2 That was the only point. I wanted to make an
3 explanation of why we stated biased policing or unlawful
4 detentions in the disjunctive.

5 THE COURT: I have no problem with the unlawful
6 detention. It did seem to me, though, that the scope of the
7 remainder of it was a bit broader than the Ninth Circuit might
8 have indicated.

9 MS. WANG: Well, I thought, Your Honor, that the Ninth
10 Circuit's concern was that these provisions be tailored to the
11 plaintiff --

Status Conference 8-11-15.txt

12 THE COURT: It was.

13 MS. WANG: -- class's concerns, and we have no
14 objection about that.

15 THE COURT: All right. Ms. Iafrate.

16 MS. IAFRATE: Your Honor, I was not prepared to
17 discuss this issue again. However, I think last time you and I
18 were in agreement, for a change, and that we believed that the
19 scope of the --

20 THE COURT: For a change I frequently agree with you,
21 Ms. Iafrate.

22 MS. IAFRATE: I believe that the language that was
23 proposed by the plaintiffs expanded further than the issues
24 than what they were trying to present. I agreed with the issue
25 on its face --

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 68

1 THE COURT: I am preparing a revised order, but I can
2 hold off for another week if you want a chance to look at that
3 section Ms. Wang addressed and address it to me next status
4 conference.

5 MS. IAFRATE: Very well.

6 THE COURT: All right. Anything else?

7 MR. BENDOR: Yes, Your Honor. Brian Sands has filed a
8 motion for summary judgment, and we said we would take that up
9 at least to figure out the status of that motion at this status
10 conference.

11 THE COURT: Well, the only reason we were going to
12 take that up is if people needed more than the average
13 deadline, in light of the fact that you're all scurrying around
14 doing other stuff preparing for the hearing.

15 Is that what you wanted to take up?

16 MR. BENDOR: It is, Your Honor. I would also note
Page 58

Status Conference 8-11-15.txt

17 that Mr. Sands raised this issue at the contempt hearing, Your
18 Honor ruled on the issue then and denied the motion, so
19 plaintiffs are of the view that this motion's already been
20 ruled on.

21 THE COURT: All right.

22 MR. BENDOR: And should be denied for the same reason.

23 THE COURT: So are you waiving your response?

24 MR. BENDOR: We are not, Your Honor.

25 THE COURT: Okay. So do you need more time for the
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 69

⌘

1 response?

2 MR. BENDOR: We do. We think that it's untimely to
3 file now, four months after the conclusion of the contempt
4 hearing and as we are getting into the middle of very intensive
5 discovery, and we also think that --

6 THE COURT: Well, four months after the first part of
7 the contempt hearing. We still have a contempt hearing. We're
8 in the middle of it, right?

9 MR. BENDOR: Precisely. But we think it's untimely,
10 and the due date, the normal due date would be September 6th,
11 which is right when we'll be in the middle of depositions,
12 likely, and much of --

13 THE COURT: How much time do you need, Mr. Bendor?

14 MR. BENDOR: We would like until three weeks after the
15 conclusion of the contempt hearings --

16 THE COURT: I'm not going to --

17 MR. BENDOR: -- because --

18 THE COURT: Go ahead.

19 MR. BENDOR: Much of the issues raised by the motion
20 are untimely when we're in the middle of discovery, because the

Status Conference 8-11-15.txt

21 argument is that Mr. Sands has been prejudiced by the lack of
22 evidence. We're just getting evidence right now in terms of
23 this very large e-mail search that we have not yet gotten, have
24 not yet reviewed.

25 THE COURT: So do you want to file a 56(d) affidavit?
CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 70

1 Do you know what I'm talking about?

2 MR. BENDOR: I apologize. No, Your Honor.

3 THE COURT: A 56(d) affidavit is a way to respond to a
4 motion for summary judgment. And in that, what you have to do
5 is identify what information you don't have that you --
6 specifically, what information you don't have that you need
7 that you're going to pursue in discovery in order to adequately
8 and effectively respond to the motion for summary judgment.

9 MR. BENDOR: We can do that, Your Honor. I think that
10 if --

11 THE COURT: That is the normal procedure if you
12 believe that there's relevant material that you don't have that
13 you need to respond to summary judgment.

14 MR. BENDOR: We can do that. I think if the other
15 side is amenable, it would be a more efficient use of the party
16 and the Court's resources to wait on the resolution of this
17 motion. But we can do that as a normal deadline if the Court
18 so requires.

19 THE COURT: Do you wish to respond to that?

20 MR. DODD: Yes, Your Honor. I would like to respond
21 specifically to --

22 THE COURT: Would you like to find a microphone?

23 MR. DODD: Thank you, Your Honor.

24 I would like to respond to his assertion that the
25 Court has already ruled on this matter. I think that is not

Status Conference 8-11-15.txt

CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 71

1 the case. I read the portion of the transcript of the hearing
2 where Greg Como raised the issue. I think it was an
3 evidentiary objection, and he said he would later be filing
4 papers on this matter, which we have now done. And I think the
5 untimeliness of the contempt -- plaintiffs raising the contempt
6 issue was never --

7 THE COURT: All right. Well, let me ask you this:
8 Are you opposed to plaintiffs' request for additional time to
9 respond to your motion?

10 MR. DODD: It depends on how much time they seek.

11 THE COURT: How much time do you want, Mr. Bendor?

12 MR. BENDOR: I mean, I don't think we're going -- we
13 can do the 56(d) affidavit, that won't be difficult, but I
14 think if we're going to really address the motion, it should be
15 after the contempt hearings conclude.

16 THE COURT: All right. Well, then why don't you
17 timely file your 56(d) affidavit, and then I'll rule if there's
18 a reason to give you an extension on that.

19 MR. BENDOR: Understood, Your Honor.

20 MR. DODD: We have no problem with that, Your Honor.

21 THE COURT: All right. Anything else?

22 I'll see you at the next scheduled status hearing.

23 (Proceedings concluded at 10:37 a.m.)
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CV07-2513, Melendres v. Arpaio, 8/11/15 Status Conference 72

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C E R T I F I C A T E

Status Conference 8-11-15.txt

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I, GARY MOLL, do hereby certify that I am duly
appointed and qualified to act as Official Court Reporter for
the United States District Court for the District of Arizona.

10

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control.

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DATED at Phoenix, Arizona, this 11th day of August,
2015.

s/Gary Moll

EXHIBIT 16

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega)
Melendres, et al.,)
)
 Plaintiffs,) CV 07-2513-PHX-GMS
)
 vs.) Phoenix, Arizona
)
Joseph M. Arpaio, et al.,) July 24, 2015
)
)
 Defendants.) 3:04 p.m.
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
(In-Court Hearing)

Court Reporter: Gary Moll
 401 W. Washington Street, SPC #38
 Phoenix, Arizona 85003
 (602) 322-7263

Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

A P P E A R A N C E S

For the Plaintiffs: Daniel J. Pochoda, Esq.
Joshua Bendor, Esq.
AMERICAN CIVIL LIBERTIES
FOUNDATION OF ARIZONA
P.O. Box 17148
Phoenix, Arizona 85011-0148
(602) 650-1854

(Telephonically) Stanley Young, Esq.
COVINGTON & BURLING, L.L.P.
333 Twin Dolphin Drive
Suite 700
Redwood Shores, California 94065
(650) 632-4700

(Telephonically) Cecillia D. Wang, Esq.
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
Immigrants' Rights Project
39 Drumm Street
San Francisco, California 94111
(415) 343-0775

(Telephonically) Andre Segura, Esq.
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street, 18th Floor
New York, New York 10004
(212) 549-2676

For the Defendants MCSO and Joseph M. Arpaio: Michele M. Iafrate, Esq.
IAFRATE & ASSOCIATES
649 N. 2nd Avenue
Phoenix, Arizona 85003
(602) 234-9775

(Telephonically) A. Melvin McDonald, Jr., Esq.
John T. Masterson, Esq.
Joseph J. Popolizio, Esq.
JONES, SKELTON & HOCHULI, P.L.C.
2901 N. Central Avenue, Suite 800
Phoenix, Arizona 85012
(602) 263-1700

A P P E A R A N C E S

For Maricopa County:

(Telephonically) Richard K. Walker, Esq.
Charles W. Jirauch, Esq.
WALKER & PESKIND, P.L.L.C.
16100 N. 71st Street, Suite 140
Scottsdale, Arizona 85254
(480) 483-6336

For Chief Deputy Sheridan: Barry D. Mitchell, Esq.
MITCHELL STEIN CAREY
One Renaissance Square
2 North Central Avenue
Suite 1900
Phoenix, Arizona 85004
(602) 358-0290

For Deputy Chief MacIntyre:

(Telephonically) David J. Ouimette, Esq.
DICKINSON WRIGHT, P.L.L.C.
Attorneys at Law
1850 N. Central Avenue, Suite 1400
Phoenix, Arizona 85004
(602) 285-5000

For Executive Chief Brian Sands:

(Telephonically) Greg S. Como, Esq.
LEWIS BRISBOIS BISGAARD
& SMITH, L.L.P.
Phoenix Plaza Tower II
2929 N. Central Avenue
Suite 1700
Phoenix, Arizona 85012-2761
(602) 385-1040

A P P E A R A N C E S

For William Montgomery and Maricopa County Attorney's Office:

April M. Hamilton, Esq.
RIDENOUR HIENTON, P.L.L.C.
Chase Tower
201 N. Central Avenue
Suite 3300
Phoenix, Arizona 85004
(602) 254-9900

For Timothy J. Casey:

(Telephonically)

Karen Clark, Esq.
ADAMS & CLARK, P.C.
520 E. Portland Street
Suite 200
Phoenix, Arizona 85004
(602) 258-3542

For Thomas P. Liddy and Christine Stutz:

(Telephonically)

Terrence P. Woods, Esq.
BROENING, OBERG, WOODS
& WILSON, P.C.
P.O. Box 20527
Phoenix, Arizona 85036-0527
(602) 271-7705

Also present:

Chief Robert S. Warshaw, Monitor
Commander John Girvin, Deputy Monitor
Chief Raul Martinez, Deputy Monitor
The Monitoring Team

P R O C E E D I N G S

THE COURT: Please be seated.

THE CLERK: This is civil case number 07-2513,
Melendres v. Arpaio, on for in-court hearing.

15:04:13

Counsel, please announce your appearances.

MR. POCHODA: Good afternoon. Dan Pochoda from the
ACLU of Arizona for plaintiffs.

MR. BENDOR: Good afternoon. Josh Bendor of the ACLU
of Arizona for plaintiffs.

15:04:24

THE COURT: Good afternoon.

MR. MASTERSON: Good afternoon, Judge. John Masterson
and Joe Popolizio for Sheriff Arpaio.

THE COURT: Good afternoon.

MS. IAFRATE: Good afternoon, Your Honor. Michele
Iafrate on behalf of Joe Arpaio.

15:04:34

THE COURT: Good afternoon.

MR. MITCHELL: Good afternoon, Judge. Barry Mitchell
on behalf of Chief Gerard Sheridan. He's not present today,
Your Honor.

15:04:52

THE COURT: Good afternoon. Anyone else?

MR. WALKER: Richer Walker on behalf of that portion
of Maricopa County government embodied in the Board of
Supervisors, the county manager, and the employees reporting to
them.

15:05:03

1 THE COURT: Good afternoon.

2 MS. HAMILTON: Good afternoon. April Hamilton,
3 Ridenour Hienton, on behalf of the Maricopa County Attorney's
4 Office and Maricopa County Attorney.

5 THE COURT: We have folks present on the phone. 15:05:17
6 Would you announce, please, telephonically?

7 MS. WANG: Yes, Your Honor. Good afternoon. It's
8 Cecillia Wang of the ACLU for the plaintiffs.

9 MR. SEGURA: Andre Segura of the ACLU for the
10 plaintiffs. 15:05:34

11 MR. YOUNG: Stan Young, Covington & Burling, for the
12 plaintiffs.

13 MR. McDONALD: Mel McDonald, special appearance for
14 Sheriff Joe Arpaio.

15 MR. WOODS: Terry Woods for nonparties Liddy and 15:05:44
16 Stutz.

17 MR. JIRAUCH: Charles Jirauch on behalf of Maricopa
18 County.

19 MS. CLARK: Karen Clark, ethics counsel for Tim Casey.

20 MR. OUIMETTE: David Ouimette for Deputy Chief 15:05:58
21 MacIntyre.

22 MR. COMO: Greg Como on behalf Brian Sands.

23 THE COURT: All right. I did receive word from
24 Mr. Eisenberg that he would not be appearing.

25 I did set the order this morning indicating the 15:06:11

1 monitor had requested the Court's intervention in a matter that
2 he thought sufficiently important. I have noted that I may
3 have misstated that the parties have refused his request for
4 documents. It's my understanding that they simply haven't
5 acted on the request, at least with respect to some of the 15:06:30
6 documents. But I am going to hear from the monitor as to why
7 he's requested this hearing, and then I'll allow -- I'll hear
8 from you, Ms. Iafrate, or Mr. Masterson, and then I'm going to
9 have some -- then I'll handle the matters as they come up.

10 Chief? 15:06:52

11 CHIEF WARSHAW: Good afternoon, Judge.

12 The monitoring team is here this week as part of its
13 regular quarterly site visits. Early in the week we had heard
14 that there had been a recent discovery of nearly 1500
15 identifications that were in the possession of the Maricopa 15:07:06
16 County Sheriff's Office.

17 During the meeting that we had on this past Monday,
18 the 21st, with representatives of the Professional Standards
19 Bureau, we were apprised of two new cases relevant to ID
20 findings, one regarding 40 IDs and another involving 20, but 15:07:23
21 there was no mention of 1,500 identifications that recently had
22 been found.

23 Chief Kiyler, who's in the room, was present with me
24 in the room, and we did inquire at the time: Had there been
25 any additional findings other than the two they represented to 15:07:45

1 us, the 40 and the 20?

2 During our investigative inquiries of other matters
3 that --

4 THE COURT: Well, what was the response?

5 CHIEF WARSHAW: That there were none other; there were 15:07:59
6 no other.

7 THE COURT: So they did not indicate that 1500 had
8 been found.

9 CHIEF WARSHAW: They did not.

10 THE COURT: All right. 15:08:05

11 CHIEF WARSHAW: During our investigative inquiries
12 this week regarding other matters that the Court and the
13 parties are aware of, we did query certain MCSO personnel
14 regarding these 1500 IDs. Those queries confirmed for us there
15 were in fact 1500 IDs that had been found. We felt that the 15:08:24
16 significance of these IDs was at the heart of the matter and we
17 chose to pursue more invasive questions regarding this matter.

18 At a minimum, and as a direct result of our
19 questioning, we learned that there had been a meeting last
20 Friday, July 17th, among PSB staff, including Chief Deputy 15:08:51
21 Sheridan and counsel; a meeting, as we understand, that was a
22 preparatory meeting in which the agency was preparing for our
23 site visit. That at some point during that meeting the 1500
24 IDs did come up, and we learned that there was an instruction
25 given that the existence of those 15 IDs not be volunteered or 15:09:20

1 acknowledged to the monitor.

2 THE COURT: Did you determine who gave that
3 instruction?

4 CHIEF WARSHAW: We attempted to, and the answer we
5 received was that would be an attorney-client matter. 15:09:33

6 THE COURT: All right.

7 CHIEF WARSHAW: With the full belief that this matter
8 is at the heart of the issue before the Court and our
9 determination to at least see these documents, I instructed one
10 of our two deputy monitors, Commander Girvin, last night to 15:09:52
11 make an attempt to reach out to senior executives of the MCSO
12 for the simple purpose of making arrangements to see if we
13 could see these IDs.

14 Commander Girvin attempted to call both telephonically
15 and by text message Captain Steven Bailey, the commanding 15:10:09
16 officer of the Professional Standards Bureau, as well as Chief
17 Deputy Sheridan, but with no luck.

18 Further, at my instruction, and after a reasonable
19 passage of time, Commander Girvin reached out to Captain Russ
20 Skinner, who's the commander of the agency's court compliance 15:10:30
21 implementation division, and he is the official contact of the
22 MCSO for -- the contact for us.

23 Captain Skinner was very cooperative and he attempted
24 to reach Captain Bailey, Chief Deputy Sheridan, and he reported
25 back to Commander Girvin that he also had attempted to reach 15:10:53

1 counsel but with no luck.

2 At that point, knowing full well that we very much
3 wanted to see these documents but were not getting cooperation
4 with the lack of response, I initiated an e-mail to every
5 attorney involved in this case advising that I might very well
6 ask for an emergency hearing for the purposes of getting relief
7 from the Court so we could in fact access those documents.

15:11:13

8 This morning I noted an e-mail from Ms. Iafrate. I
9 did call her at approximately 7:45 this morning. She inquired
10 with more specificity as to what it is that we wanted. I
11 advised her that we were looking to gain access to 1500 IDs
12 that had been brought to our attention as well as 50
13 hard drives that we believed to be in the Property Unit and
14 were associated with the Dennis Montgomery matter.

15:11:40

15 I would note that back on April 27th, when we received
16 the single hard drive that we did get at that time, we were
17 told by Chief Knight that that material was the only material
18 in the possession of the agency relevant to the Montgomery
19 matter. I gave Ms. Iafrate the DR number, the department
20 report number that was associated with the 50 hard drives.

15:12:03

15:12:24

21 Though I didn't hear back from Ms. Iafrate, we
22 proceeded to the Professional Standards Bureau and got there
23 about 8:30 this morning, myself, Chief Martinez, and
24 Chief Kiyler. We were met by Lieutenant Kratzer, who advised
25 us that he had been told by Captain Bailey that we were coming.

15:12:49

1 Lieutenant Kratzer gave us some updates regarding some recently
2 found IDs and gave us some details about some of the matters
3 that had been alluded to at our meeting on Monday. When we
4 requested to see the 1500 IDs in question, he did in fact
5 produce them. They were in a large plastic bag in no
6 particular order. There was no subset, sub-packaging; one
7 large bag. Lieutenant Kratzer advised us --

15:13:17

8 THE COURT: Let me interrupt you, and hold your spot.

9 Did any of the IDs appear to be the identifications of
10 members of the plaintiff class in this matter?

15:13:36

11 CHIEF WARSHAW: Yes, that was quite apparent. This
12 was a clear plastic bag, and whether it was in the form of
13 driver's licenses or other identification cards, that was very
14 clear.

15 THE COURT: What kind of other identification cards
16 were there?

15:13:49

17 CHIEF WARSHAW: There was Arizona identification
18 cards; there were passports; there were other official
19 governmental identification cards.

20 THE COURT: Like from Mexico and elsewhere, or --

15:14:00

21 CHIEF WARSHAW: Yes.

22 THE COURT: All right.

23 CHIEF WARSHAW: Lieutenant Kratzer advised us that the
24 Professional Standards Bureau became aware of these IDs when
25 they were returned to the Property Unit by a sergeant, a

15:14:15

1 sergeant by the name of Sergeant Knapp. Sergeant Knapp had
2 received permission, as we were told, commencing in 2006, to
3 obtain these IDs because he wanted to teach a class on
4 fraudulent IDs. Sergeant Knapp went to the Property Unit on
5 several occasions over the years to obtain what aggregated to
6 1459, so when I earlier referred to 1500, the actual number is
7 1,459. Accord- --

15:14:35

8 THE COURT: 459 or 1459?

9 CHIEF WARSHAW: 1,459, yes, sir.

10 According to Lieutenant Kratzer, there was no
11 documentation as to when the sergeant got which IDs, what the
12 circumstances were, and when, specifically, that he returned to
13 receive additional documents. It seemed there was some
14 uncertainty if he had simply gone at will. But a point that
15 was most noteworthy to us was we were advised by Lieutenant
16 Kratzer that Sergeant Knapp has in fact never taught a class in
17 fraudulent IDs.

15:14:57

18 We asked Lieutenant Kratzer what we believed to be one
19 of the more significant questions, and that was whether he or
20 anyone else knew precisely how the Maricopa County Sheriff's
21 Office ever came into possession of these IDs in the first
22 place. He said he had no ID -- he had no idea as to how that
23 would have occurred, but what he did say was that these items,
24 because they were in the Property Unit and were appearing to
25 have no more useful purpose, were in the Property Unit for

15:15:20

15:15:41

15:16:06

1 purposes of being destroyed.

2 In our discussions -- and counsel for the counsel was
3 present -- the question, or the statement was made that this
4 was a waste of time. Counsel also added that would every piece
5 of property in the Property Unit belonging to a Spanish person,
6 you know, have to be looked at?

15:16:34

7 But even in the presence of our suggestions that a
8 reasonable attempt should be made to determine how these
9 documents were procured and what the purpose was, there seemed
10 to have been no interest in undertaking any attempt to
11 determine the reasons these IDs had been -- had come into their
12 possession in the first place, or any attempt to reasonably
13 identify whether or not there were still people living in the
14 people who were looking for their lost ID.

15:16:52

15 We felt, Your Honor, that based on various histories
16 in this particular case relevant to property, whether we saw it
17 in the Armendariz matter or other matters that have been
18 brought before this Court, that our great concern has been and
19 is whether or not this Property Unit is being used as a
20 repository or as a lockbox for holding away from either public
21 scrutiny or court scrutiny documents that were obtained either
22 unscrupulously, illegally, or whether the Property Unit is
23 being used as a lockbox for purposes simply unknown to us.

15:17:13

15:17:36

24 And, of course, our greatest concern, and the matter
25 which we want to bring to this Court's attention, was that

15:18:08

1 these particular documents were slated for destruction, and had
2 this matter not come to our attention and had we not made the
3 kind of inquiry that we made, these items in fact would have
4 been destroyed.

5 THE COURT: When you talk about the 50 hard drives
6 related to the Montgomery investigation, where did you find out
7 about those?

15:18:24

8 CHIEF WARSHAW: As a result of document requests that
9 were made of the MCSO, after the initial release of the single
10 hard drive we got on April 27th, it became apparent, in looking
11 at various e-mail streams, that there were references to
12 hard drives that were repositied in the Property Unit.

15:18:45

13 THE COURT: Did anybody look -- did you request the
14 hard drives in the Property Unit?

15 CHIEF WARSHAW: We request -- I'm sorry, Judge.

15:19:06

16 THE COURT: I think -- did you request that the
17 hard drives be turned over that were in the Property Unit?

18 CHIEF WARSHAW: We request any and all. Yes, we
19 certainly today requested that today, yes, sir.

20 THE COURT: And you talked about a specific DR number.
21 Is that a locker? What is that?

15:19:17

22 CHIEF WARSHAW: The DR number would be -- a DR
23 number is the department report number, so it would be a filing
24 mechanism in which they could find the items in the particular
25 bin based upon what the DR number is.

15:19:34

1 THE COURT: Did you request what the contents of that
2 particular DR unit was? Did you ask anybody to verify the
3 contents of that unit?

4 CHIEF WARSHAW: Yes.

5 THE COURT: And what were you told?

15:19:46

6 CHIEF WARSHAW: We were told that the number that we
7 gave did in fact correspond to 50 hard drives.

8 THE COURT: Was there anything else in the unit?

9 CHIEF WARSHAW: I do not believe. I don't believe.

10 THE COURT: Okay. And so you haven't had any response
11 in --

15:20:04

12 CHIEF WARSHAW: We've had no response.

13 THE COURT: -- in terms of your request to have those
14 50 hard drives.

15 CHIEF WARSHAW: That is correct. And we made that
16 very clear to Lieutenant Kratzer, that that was also part of
17 our mission this morning.

15:20:11

18 THE COURT: Ms. Iafrate.

19 MS. IAFRATE: Your Honor, if I could rely on
20 co-counsel to talk about this chain of events, I've kind of
21 been out of commission the last 24 hours.

15:20:36

22 I can tell you that I did have a conversation with
23 Mr. Warshaw this morning. He provided me with the DR number.
24 I called over to Property and Evidence in order to make certain
25 that that property was pulled, and I received information that

15:20:53

1 the monitors were over in PSB, and I informed them that the
2 property regarding the DR number had been pulled. That was the
3 last that I heard.

4 THE COURT: Let me ask, and I realize there may be
5 privilege issues that need to be asserted here, I don't want to 15:21:11
6 trample on anybody's rights, but were you aware that the 1500
7 identifications were found?

8 MS. IAFRATE: Yes, I was, Your Honor, and we did not
9 lie to the monitors or keep that from the monitors. In fact,
10 when the questions -- 15:21:30

11 THE COURT: Well, let me ask you, are you aware that
12 any instruction was given to MCSO that they were not to
13 volunteer that information?

14 MS. IAFRATE: No, and any further conversation is
15 privileged. 15:21:42

16 THE COURT: Well, it may or may not be privileged.

17 MS. IAFRATE: Well, I would assert the privilege to --

18 THE COURT: I understand that you may assert the
19 privilege, and we're not going to resolve that here this
20 afternoon. 15:21:54

21 MS. IAFRATE: Understood.

22 Your Honor, I was in that meeting.

23 THE COURT: You were in that meeting?

24 MS. IAFRATE: I was in -- no. Excuse me. I was in
25 the meeting with Chief Kiyler when it was discussed regarding 15:21:59

1 pending current investigations regarding IDs, and there were
2 two.

3 THE COURT: Which involved the 40 and the 20.

4 MS. IAFRATE: Correct.

5 THE COURT: But not the 1500.

15:22:11

6 MS. IAFRATE: Correct.

7 THE COURT: So there's actually 1459 IDs, plus 40 more
8 IDs, plus 20 more IDs.

9 MS. IAFRATE: Correct. And the 40 and the 20 are over
10 in Property.

15:22:25

11 THE COURT: You're aware that in February I issued an
12 order that the MCSO was to disclose -- let me see if I can find
13 that. I entered an order that MCSO was to disclose copies of
14 identification documents seized by MCSO personnel from apparent
15 members of the plaintiff class --

15:22:39

16 MS. IAFRATE: Yes.

17 THE COURT: -- are you not?

18 MS. IAFRATE: Yes.

19 THE COURT: And these are yet an additional -- well,
20 I'm not sure that they all involve members of the plaintiff
21 class, but apparently you've shown them to my Monitor Team and
22 a number of them involve members of the plaintiff class,
23 correct?

15:22:49

24 MS. IAFRATE: I don't know what number does or does
25 not. I would assume that there would likely be some.

15:23:00

1 THE COURT: Did you ask the MCSO to provide you with
2 these documents back in February?

3 MS. IAFRATE: Your Honor, I believe that that's a
4 privileged communication.

5 THE COURT: All right. All right. You're right. 15:23:13

6 Anything else you want to say?

7 MS. IAFRATE: Your Honor, regarding the other
8 chronology of events, I apologize that I'm not prepared to
9 testify regarding that, and I would hope that Mr. Masterson
10 would have the opportunity to answer any further questions. 15:23:27

11 THE COURT: Well, as it pertains to the 50
12 hard drives, I did, too, notice in the documents that have been
13 made public that some of the e-mails reference 50 or 60
14 hard drives taken from Mr. Montgomery, and noted that
15 apparently you -- by "you" I don't mean you personally; I mean 15:23:43
16 your client -- produced only one in May.

17 Have you made any effort to determine what is in that
18 DR file that Mr. Warshaw asked you about?

19 MS. IAFRATE: Yes.

20 THE COURT: And what is in there? 15:24:00

21 MS. IAFRATE: There are approximately 40 to 50
22 hard drives that may potentially relate to documents from the
23 Seattle investigation.

24 THE COURT: Anything else in there?

25 MS. IAFRATE: No. 15:24:12

1 THE COURT: Thank you.

2 Mr. Masterson.

3 MR. MASTERSON: Judge, I guess I'd first like to
4 address -- well, I have a question, perhaps the Court already
5 answered this question, where in the Court's order setting this 15:24:36
6 hearing today the Court says that defendants have "declined to
7 provide access."

8 THE COURT: Yes, I did answer that question.

9 MR. MASTERSON: Okay.

10 THE COURT: I don't know that you've declined to 15:24:47
11 provide access; that was a misunderstanding on my part.

12 MR. MASTERSON: All right. The second thing I --

13 THE COURT: Are you going to provide those
14 hard drives?

15 MR. MASTERSON: I knew nothing of the hard drives 15:24:56
16 until --

17 THE COURT: How about my order that the hard drives be
18 produced right now?

19 MR. MASTERSON: Well, I don't have them with me, but
20 here's my question. I'm going to object, and I assume there 15:25:10
21 have been objections before, as to relevance of these
22 hard drives in the Montgomery materials, because I do not
23 see --

24 THE COURT: I've already ruled on that 40 times.

25 Objection's overruled. 15:25:22

1 MR. MASTERSON: Well, let me make my record, please,
2 Judge.

3 THE COURT: The record has been made. Go ahead and
4 make it, Mr. Masterson.

5 MR. MASTERSON: Your Honor --

15:25:30

6 THE COURT: Let me tell you something. I realize that
7 you're new to this litigation, but you certainly have read,
8 have you not, my questioning of Sheriff Arpaio?

9 MR. MASTERSON: I have read your questioning.

10 THE COURT: When I required him to turn over all these
11 things?

15:25:44

12 MR. MASTERSON: You asked him to hold on to them.

13 THE COURT: And I said we would send the monitor over
14 to retrieve them, didn't I.

15 MR. MASTERSON: You did.

15:25:54

16 THE COURT: And that it needed to be done immediately,
17 didn't I.

18 MR. MASTERSON: You did.

19 THE COURT: All right.

20 MR. MASTERSON: But that doesn't make them relevant --

15:25:58

21 THE COURT: All right.

22 MR. MASTERSON: -- to the OSC.

23 THE COURT: Make your objection --

24 MR. MASTERSON: To the --

25 THE COURT: Make your objection on the record.

15:26:02

1 MR. MASTERSON: Your Honor, there are distinct --
2 three distinct issues in the OSC proceeding. There are
3 underlying issues which --

4 THE COURT: Well --

5 MR. MASTERSON: -- the Court ruled on --

15:26:10

6 THE COURT: -- let me tell you what. We're not going
7 to go through this. I'll tell you this. They may not be
8 relevant. I realize that they may not be relevant. But they
9 also may be very relevant. And they were demanded to be
10 produced and they haven't been produced.

15:26:23

11 So I would propose this. I'm going to send the
12 marshals over. You'll provide everything that's in that DR
13 locker. We'll hold it here. I won't look at it. You can have
14 full access to it. So can the monitor. If you have --
15 whatever's in there, and I don't know what's in there, but if
16 whatever is in there is material that I've already ordered --
17 for instance, if, it seems to me, that the other documents
18 suggest -- that's the database that Montgomery downloaded --
19 then it's going to be turned over to the United States
20 Government under the same terms the other matter was turned
21 over. You can preserve whatever objections you have to its
22 relevance in the current proceeding and we'll hear then. There
23 may be nothing that is relevant, but I certainly don't know
24 that now.

15:26:43

15:27:03

25 MR. MASTERSON: I understand that, Judge, and I'm

15:27:14

1 not -- I'm not resisting that or saying that the Court does not
2 have the authority -- I'm certainly not saying the Court does
3 not have the authority to order them produced. I am objecting,
4 and I think the objection's been made before and ruled upon,
5 but I will make a continuing objection to the relevance of
6 those materials to this proceeding.

15:27:29

7 THE COURT: And why don't we find out what those
8 materials are first.

9 MR. MASTERSON: Let's do that.

10 THE COURT: All right.

15:27:40

11 MR. MASTERSON: Now, I --

12 THE COURT: Any problem if I order the marshal to go
13 over and take those documents and put them in the evidence
14 locker of the marshals today?

15 MR. MASTERSON: I don't know. May I consult with
16 counsel, please?

15:27:52

17 THE COURT: You may.

18 MS. IAFRATE: Your Honor, may I have a court order
19 referencing the DR number that I know that Mr. Warshaw has --

20 THE COURT: Sure.

15:28:04

21 MS. IAFRATE: -- so that then we can remove it from
22 Property and then put it back into the marshal property --

23 THE COURT: Sure.

24 MS. IAFRATE: -- just so that we have a chain
25 of custody.

15:28:11

1 THE COURT: Sure, absolutely. I don't know what that
2 is, but I'll -- that's a reasonable request.

3 MS. IAFRATE: Thank you.

4 THE COURT: So we've resolved that one. Let me just
5 be clear on the record, you can have access to it here, and the 15:28:18
6 monitor can have access to it here. And you can review it for
7 privileged materials or whatever else. I'm going to require it
8 to be done with some expedition.

9 What about the -- and then -- then if there's anything
10 in it that I think may be relevant or that the parties think 15:28:40
11 may be relevant, you can raise your -- you can re-raise your
12 relevance objections then. Because it may well be that if that
13 is, for example, the Montgomery database, and it actually turns
14 out to be full of stuff that doesn't relate to anything and
15 isn't taken from the CIA, then there may be limited relevance 15:29:01
16 here except to the extent -- well, there may be no relevance,
17 depending upon what the facts are, other than to verify that
18 the Montgomery investigation was based on whatever, if anybody
19 tries to assert its truthfulness, but that's a very limited
20 relevance, I'll grant you. There may be something in it that's 15:29:23
21 relevant, but I think that we're all entitled to make that
22 determination based on the documents.

23 That being said, was there anything else you wanted to
24 say about the document, the hard drives?

25 MR. MASTERSON: No, I have -- no, nothing about the 15:29:35

1 hard drives.

2 THE COURT: What about the identifications?

3 MR. MASTERSON: That I do have something to say about,
4 and the first thing I'd like to do is correct some
5 misstatements by Chief Warshaw.

15:29:46

6 First off, let me explain how I came to even be
7 involved in this issue is last night I received an e-mail from
8 Chief Warshaw at 9:17 p.m., basically threatening me --

9 THE COURT: Where did he -- do you have a copy of that
10 e-mail?

15:30:07

11 MR. MASTERSON: I do.

12 THE COURT: I'll tell you that I received a copy that
13 he sent to everybody else. It said 9:17, but I think he's got
14 his Eastern time stamp set on it because I got it about
15 6 o'clock. So I just -- are you sure you received it at 9:17?

15:30:22

16 MR. MASTERSON: I know I did not receive it at
17 6 o'clock, Judge. Maybe this is more than everyone needs to
18 know in the courtroom, but what the heck, I'll throw it out
19 there.

20 THE COURT: You don't need to if it's personal.

15:30:35

21 MR. MASTERSON: I was lying in bed reading, and it was
22 after 9:00 when I --

23 THE COURT: All right. So what does he say in there
24 that threatens you?

25 MR. MASTERSON: Well, that basically he's saying that

15:30:43

1 he's -- he's being denied access to documents, and that he's
2 going to request an emergency hearing.

3 THE COURT: What about that's a threat?

4 MR. MASTERSON: I immediately responded. I know --

5 THE COURT: Well, what about that is a threat,

15:30:57

6 Mr. Masterson?

7 MR. MASTERSON: Well, Judge, when anyone tells me
8 that, you know, that I have to jump out of bed at 9 o'clock at
9 night and do something --

10 THE COURT: He didn't tell you that. He said he was
11 going to -- he was requesting documents, and that he might
12 raise the matter today. Right?

15:31:06

13 MR. MASTERSON: Well, that's a -- Judge, it's a
14 threat. He's telling me if I don't -- if I don't do something
15 immediately, he's going to run to the judge. To me, that's a
16 threat. It's at 9 o'clock at night, that's a bigger threat. I
17 don't like that. So I responded --

15:31:20

18 THE COURT: Let me just say that I have given the
19 monitor the authority to do precisely that when he runs into
20 issues that cannot be resolved. So if you feel like it's a
21 threat, I'm sorry that your feelings were hurt, but we need to
22 resolve this matter. And we need to resolve it fairly, and we
23 need to make sure that evidence is preserved.

15:31:35

24 MR. MASTERSON: My feelings don't get hurt easily, but
25 what I will tell you, Judge, as a litigant, as an attorney for

15:31:51

1 litigants, we are told by the federal court that if we have a
2 dispute, contact the other side. Pick up the phone and try to
3 work it out before you contact the Court.

4 THE COURT: I believe he did that all morning, didn't
5 he? 15:32:08

6 MR. MASTERSON: Like I say, I became aware that the
7 first contact he had with one of my clients was with
8 Captain Skinner past 6 o'clock in the evening. The first I
9 became aware of it was past 9 o'clock in the evening. I
10 immediately responded to the e-mail -- 15:32:20

11 THE COURT: And you were with him this morning.

12 MR. MASTERSON: I was with him this morning at 8:45 --

13 THE COURT: And he made the request to Ms. Iafrate
14 this morning.

15 MR. MASTERSON: Excuse me? 15:32:28

16 THE COURT: He made the request on the 50 hard drives
17 to Ms. Iafrate this morning.

18 MR. MASTERSON: Correct.

19 THE COURT: And you did -- you were with him this
20 morning when -- 15:32:35

21 MR. MASTERSON: Correct.

22 THE COURT: -- he did -- when you did provide the
23 identifications.

24 MR. MASTERSON: Correct.

25 THE COURT: Thank you. 15:32:42

1 MR. MASTERSON: So I'm wondering why we're here for
2 some emergency when he got the access --

3 THE COURT: Well, one of the --

4 MR. MASTERSON: -- to these documents that he
5 requested. 15:32:47

6 THE COURT: -- reasons we're here is the hard drives.
7 And one of the concerns I have, Mr. Masterson, and I know you
8 weren't involved in the case then, I asked for identifications
9 to be provi- -- all the identifications that Maricopa County
10 had. Let me find the language. 15:32:58

11 "Copies of identification documents seized by MCSO
12 personnel from apparent members of the plaintiff class," I
13 ordered that that be produced in February. I ordered that it
14 be produced by February 27th, and I entered the order on
15 February 12th. And we still get these documents that are -- I 15:33:17
16 would say "trickling in," but I hardly think 1400 is a trickle.

17 And then, when I hear that there were directions given
18 that they were not -- their presence was not to be volunteered
19 to the monitor, I'm very -- and when I consider your clients'
20 track record in this case, where one of the reasons we're 15:33:40
21 having this hearing is because they did not provide documents
22 that were requested before; they destroyed documents and were
23 sanctioned for it; and now I entered this order, and
24 Ms. Iafrate, to her credit, acknowledged that they'd never even
25 provided these documents prior to the hearing. Somebody has to 15:33:57

1 be held responsible sometime.

2 And I realize that you've come to this case late, but
3 you're representing your clients, your clients are going to be
4 held responsible, and it's going to be now.

5 MR. MASTERSON: Judge, then let's get -- let's go into 15:34:15
6 a little background on these 1500 documents, 1459.

7 THE COURT: You know what? I'm afraid that I know the
8 background a whole lot better than you do, sir. So what do you
9 have to say about it?

10 MR. MASTERSON: What I have to say about it is these 15:34:28
11 were documents that were held in Property. They were scheduled
12 for de- --

13 THE COURT: Slated for destruction.

14 MR. MASTERSON: Absolutely. I assume every single day
15 there are -- there are evidence -- or evidence and other items 15:34:37
16 in Property scheduled for destruction.

17 THE COURT: Yeah.

18 MR. MASTERSON: I assume that's an ongoing process.

19 THE COURT: You are aware that I have had very great
20 concern about other items in this case that were sent to 15:34:48
21 Property and slated for destruction that involved memos to
22 Captain Bailey covered over some of these other identifications
23 that were sent to be destroyed after Captain Bailey was placed
24 in charge of the unit that was investigating these very
25 document seizures by the MCSO. 15:35:03

1 Were you aware of that, sir?

2 MR. MASTERSON: I was not.

3 THE COURT: Well, you are now. I'm very concerned
4 about how your clients run their Property Unit. It was
5 something that I went over with Chief Deputy Sheridan in his 15:35:18
6 testimony in April, if you wanted to review that.

7 MR. MASTERSON: There is absolutely no evidence that
8 these 15 -- 1459 items were seized improperly, held improperly,
9 at all. That's pure speculation.

10 THE COURT: Well, let me tell you, I got an order that 15:35:34
11 required them to be produced five months ago and they were not
12 produced. That's pretty persuasive evidence that causes me at
13 least concern, when they haven't been produced and when I hear
14 my monitor say that there was some sort of instruction not to
15 volunteer their presence. 15:35:52

16 MR. MASTERSON: That I know nothing about.

17 THE COURT: Do you know anything about it,
18 Ms. Iafrate, any more than you've said and assert a privilege
19 on?

20 MS. IAFRATE: I have already expressed everything that 15:36:01
21 I can reveal to you, Your Honor.

22 THE COURT: All right. Well, that is the basis of my
23 concern, Mr. Masterson, that we are -- that your client is far
24 from forthcoming. And even assuming that there isn't any
25 conscious intent to withhold documents, there's certainly a 15:36:18

1 negligent, if not reckless or grossly negligent, failure to
2 comply with discovery orders in this case. That's my concern.

3 MR. MASTERSON: I understand that's been a problem in
4 the past.

5 THE COURT: No, it's a problem right now. 15:36:35

6 MR. MASTERSON: Well, I don't think it's a problem
7 with these 1400 licenses, et cetera, Judge, because --

8 THE COURT: Because why?

9 MR. MASTERSON: -- my understanding --

10 THE COURT: Because they weren't produced when I asked 15:36:46
11 them five months ago?

12 MR. MASTERSON: Because a sergeant had them who was
13 using them or going to use them for a legitimate purpose, did
14 not use them for that purpose, admittedly, and then returned
15 them. If there had been some intention -- 15:36:55

16 THE COURT: What about my instruction would permit
17 that sergeant to keep those documents without providing them to
18 the plaintiffs? Nothing.

19 MR. MASTERSON: I have no idea whether that particular
20 sergeant -- 15:37:13

21 THE COURT: Well --

22 MR. MASTERSON: -- realized he was holding
23 information.

24 THE COURT: -- here's what we're going to do. You're
25 going to provide every one of those -- 15:37:20

1 Let me ask you this: Are you satisfied with respect
2 to the 40, the 20, and the 1459, that the defendants have
3 accounted for them and will provide access to them without us
4 having to take them into our custody?

5 CHIEF WARSHAW: No. 15:37:34

6 THE COURT: All right. Then I'm going to order the
7 monitor -- I'm going to order the marshal to go over this
8 afternoon, and together with the contents of the DR locker,
9 he's going to take possession of those licenses.

10 MR. MASTERSON: Judge, obviously we will comply with 15:37:49
11 that order. I'd just like the monitors to provide information
12 to me and why you feel that is necessary.

13 THE COURT: We're not going to have this kind of a
14 discussion. I've already ruled. And I'm going to enter one
15 other order, and that is nothing, nothing will be taken out of, 15:38:02
16 or destroyed, from the Property Unit of the Maricopa County
17 Sheriff's Office without accounting for it to the monitor
18 between now and the -- and a time when the monitor can review
19 that more fully with the Maricopa County Sheriff's Office
20 policy and procedure. 15:38:24

21 Do you understand that order?

22 MR. MASTERSON: No, because I assume --

23 THE COURT: I didn't ask whether you agreed with the
24 order.

25 MR. MASTERSON: No, no, I don't understand. 15:38:33

1 Are you saying -- and again, I would assume on a daily
2 basis items are removed from Property for, say, use in trial --

3 THE COURT: Oh, I get your point. I get your point.

4 When those are removed for that purpose, I just
5 want -- I assume when they're removed there has to be a record 15:38:52
6 kept of their removal.

7 MR. MASTERSON: Correct, there -- there's a law.

8 THE COURT: I want a complete record kept of every
9 removal from Property; I want nothing destroyed from the
10 Property Unit until the monitor is able to assess found 15:39:02
11 property or other matters that may be there that may be
12 relevant to this case.

13 MR. MASTERSON: That, I understand.

14 THE COURT: All right. Thank you. Thank you for
15 allowing me to clarify. 15:39:15

16 MS. IAFRATE: Judge, could I do a housekeeping matter?

17 THE COURT: Yeah, we have several. Go ahead.

18 MS. IAFRATE: Well, regarding your orders, the --
19 we're just using round numbers, I think, the 40 and the 20?

20 THE COURT: Yes. 15:39:37

21 MS. IAFRATE: Those are in Property and Evidence, so
22 along with the DR number that you're going to issue an order
23 of, if we could have that order, we would serve it upon
24 Property and Evidence so that that can be removed and there
25 would be a chain of custody. But the 1500, the monitors 15:39:50

1 reviewed them in PSB this morning and so they're still lock and
2 key, behind a lock and key in PSB. So those don't need to be
3 removed from Property and Evidence.

4 THE COURT: Well, I don't know what DR number or
5 anything else the 40 and the 20 may be under in Property.

15:40:07

6 Do you know what that is?

7 MS. IAFRATE: No, but I can provide it to you.

8 THE COURT: If you'll provide it immediately, I'll
9 give you your order.

10 MS. IAFRATE: Thank you.

15:40:16

11 THE COURT: And then if you have the DR number for the
12 hard drives and whatever else may be in that file, if you
13 provide that, I'll give you the order.

14 MS. IAFRATE: I do. I received it for the first time
15 this morning from Chief Warshaw, so I know he has it.

15:40:25

16 THE COURT: Well, if you'd give it to me, I'd
17 appreciate it. I will direct the marshal -- I'll finish that
18 order. I'll direct the marshal to take custody of it as I've
19 indicated. Whenever you want to see these materials you can
20 come over and look at them. You can arrange with the monitor
21 to have them ghost-copied so everybody has a full copy of the
22 hard drives. Any other documents, you can have copies of and
23 you can have full access, but they'll remain here. At least
24 until we can assert whether there's any relevance, or whether
25 there's any disputes about their relevance.

15:40:39

15:40:58

1 Any concern about that?

2 MS. IAFRATE: No, except for I received a letter that
3 I'm sure Chief Warshaw received also from the person that was
4 here representing the United States that they would like to
5 remove those and have them copied August 7th, and so I don't
6 know if you are going to permit them to remove them from here
7 to go have them copied. 15:41:16

8 THE COURT: I think they were going to -- I think
9 wasn't -- they wanted to copy them in some sort of secure
10 facility? 15:41:33

11 MS. IAFRATE: Yes.

12 THE COURT: If in fact those are the Montgomery dump,
13 then I will allow that to happen. But as I said before,
14 Ms. IafRATE, if you or Mr. Masterson or Mr. Popolizio or
15 whoever wants to accompany, you can do that. It's my
16 understanding you may have to provide some citation to be
17 cleared to get into the SCIF. 15:41:44

18 MS. IAFRATE: Yes, understood. But just so that we
19 can think through the process in the future, if I could come up
20 with a suggestion regarding how we could keep the chain of
21 custody from them now coming over here to get them rather than
22 checking them out from Property, just so that we can all be
23 comfortable with the chain of custody. 15:41:57

24 THE COURT: All right. If you have any problem with
25 me directing the marshal to take them into his custody, we'll 15:42:13

1 direct an inventory be made, he'll keep them here under lock
2 and key in the evidence room, or wherever they keep them, and
3 then you can go over with them on the SCIF.

4 Any problem with that?

5 MS. IAFRATE: No.

15:42:25

6 THE COURT: All right.

7 Let me just raise a few housekeeping matters of my
8 own. I received from Mr. Como some concern about his
9 availability on scheduling for the renewed hearing.

10 I did just say what dates I was hope -- I was holding,
11 hoping they would work for everybody, they may not work for
12 everybody, so in the hearing next Friday we may take up
13 scheduling. I don't intend to have this matter be hanging
14 around for very long, but if the dates I gave are really
15 unworkable for the parties or for necessary witnesses, we can
16 adjust them; we can take it up then.

15:42:40

15:42:56

17 The monitor, I think I've indicated before, has done
18 interviews this week, and they may be continuing next week in
19 terms of the investigations he's undertaking pertaining to
20 adequacy of investigation and other matters. I've directed
21 that any party that wants transcripts of those interviews is
22 entitled to have them, and I just guess I want to make that
23 clear.

15:43:14

24 That's all I have. Any other concerns?

25 MR. POCHODA: No, Your Honor.

15:43:43

1 MS. WANG: Your Honor, this is Cecillia Wang on behalf
2 of the plaintiff. I just want to say on the record that in
3 addition to what appears to be a violation of the Court's
4 February 2015 order relating to these identifications that were
5 newly discovered by the Court-appointed monitor and which were 15:44:00
6 apparently withheld from the monitor, plaintiffs are very
7 concerned about that issue. In addition to being required to
8 be turned over by the Court's order, plaintiffs specifically
9 asked defendants repeatedly over the course of the past several
10 months for information and documents that would help to 15:44:22
11 identify potential victims of the MCSO's violations of the
12 Court's preliminary injunction order.

13 In addition, given the time frame of those documents,
14 identification documents that the court-appointed monitor,
15 Chief Warshaw, outlined, it does sound like some of them would 15:44:43
16 go back to the pretrial discovery period in this case. And so
17 plaintiffs are concerned. We would request that we get copies
18 of all those identifications once they are secured by the
19 Marshal's Office.

20 And finally, Your Honor, I would add that we're very 15:44:59
21 troubled by what we're hearing about the apparent involvement
22 of defense counsel in the withholding of those identification
23 documents from the court-appointed monitor and from plaintiffs,
24 for that matter, and we'll -- we'll consider next steps on
25 that. 15:45:18

1 THE COURT: Yes, I believe I am concerned that we
2 would not have discovered these matters if the monitor hadn't
3 discovered them. I share that concern, but I do recognize that
4 everybody has a right to be heard.

5 Clearly, issues that have been raised today are issues 15:45:31
6 that cannot resolved today, and I will be open to your
7 suggestions. I'm also very concerned that we receive -- we get
8 our arms around all the documents that are relevant to this
9 hearing before we go forward whether or not they've been
10 intentionally or negligently withheld, and then we can sort out 15:45:50
11 what needs to happen as a result of that afterward.

12 So it will probably -- you know, I'll welcome any
13 concerns you have, we will raise it as a topic Friday making
14 sure -- next Friday making sure that we have done everything
15 that needs to be done to make as sure as we can that we have 15:46:06
16 all the documents that we need, and then we can determine what
17 other steps may be necessary in light of what we know now and
18 what we may know later.

19 Anything else.

20 MR. POCHODA: If I may, just briefly, Your Honor, it 15:46:16
21 doesn't appear that the orders, the February 15th order and
22 other orders, have been transmitted to all of the members of
23 MCSO, and we would ask, as you would with a preservation
24 letter, no less an order from this Court that there be some
25 sort of broadcast to all of those types of things that have to 15:46:37

1 be maintained. And it's not up to defense counsel to decide
2 whether there's any evidence --

3 THE COURT: Well --

4 MR. POCHODA: -- that any documents were obtained
5 illegally --

15:46:47

6 THE COURT: I appreciate all that, Mr. Pochoda. We're
7 not going to raise it in today's hearing. But I'll tell you,
8 even if there has been a broadcast, it's clearly not been
9 adequate.

10 MR. POCHODA: Well, that's right.

15:46:56

11 THE COURT: And so we're going to have to figure out
12 what adequate steps have to be taken to make sure that we don't
13 have any more incidents like this.

14 We'll see you next Friday.

15 THE CLERK: All rise.

15:47:10

16 (Proceedings concluded at 3:47 p.m.)

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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 25th day of July, 2015.

s/Gary Moll